

THE DEVELOPMENT OF THE THEORY OF THE INSTITUTION OF  
*HISBAH* IN MEDIEVAL ISLAM

BY

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IN THE NAME OF ALLĀH  
THE COMPASSIONATE, THE MERCIFUL

**DECLARATION**

I, THE UNDERSIGNED, HEREBY DECLARE THAT THIS THESIS IS  
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SOURCES ARE DULY ACKNOWLEDGED

AHMAD BIN CHE YAACOB



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## ABSTRACT

The main focus of this study is to examine the development of the theory of the institution of *ḥisbah* in medieval Islam. In particular, the study will provide an analysis and paraphrase of the work of Yaḥyā ibn ʿUmar (d. 289/901) which is considered the earliest source on the subject.

The study is divided into seven chapters, an Introduction and a Conclusion. The Introduction explains the aims of this study and is followed by the discussions on the origin of the role of market supervision and the definition of *ḥisbah*. Next, works of medieval Muslim scholars and studies made by the contemporary scholars are reviewed. Chapter One discusses the life and career of Yaḥyā ibn ʿUmar, followed by an analysis of the two texts of his work; *Kitāb Aḥkām al-Sūq* and *Kitāb al-Aḥkām fī Jamīʿ Aḥwāl al-Sūq*. In Chapter Two, a paraphrase of these two texts is made. Chapter Three deals with the elements of *ḥisbah*, covering the discussions on the person carrying out the duty of *ḥisbah* (i.e. the *muḥtasib*), the person to be supervised, subject of *ḥisbah*'s supervision and stages of *ḥisbah*'s penalties. The remaining four chapters examine the duties of the *muḥtasib*. The duty of the *muḥtasib* to supervise the market is discussed in Chapter Four and Chapter Five examines his duty to supervise moral and religious behaviour. The discussions in Chapter Six is concerned with the supervision of medical professions while Chapter Seven deals with the administration of the city. This is followed by a Conclusion which summarizes the discussions previously made and presents the findings of this study.

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## NOTE ON TRANSLITERATION

The transliteration system used in this thesis is that used by the Encyclopaedia of Islam with some exceptions for the sake of convenience. The exceptions are as follows;

- (i) *th* instead of th
- (ii) *j* instead of ḡ
- (iii) *kh* instead of kh
- (iv) *dh* instead of dh
- (v) *sh* instead of sh
- (vi) *gh* instead of gh
- (vii) *q* instead of k
- (viii) *iyy* instead of īy
- (ix) *tā' marbūṭah* has been written as "h" at the end of a word when it is not part of the *iḍāfah* construction, in which it is written as "t".

## LIST OF ABBREVIATIONS

The abbreviation used below only to the works regularly referred to, and the bibliographical data of the other works are provided in their first occurrence.

<i>Aḥkām</i>	Ibn al-Farrā', <i>al-Aḥkām al-Sulṭāniyyah</i>
<i>Aḥkām</i>	Al-Māwardī, <i>al-Aḥkām al-Sulṭāniyyah wa al-Wilāyah al-Dīniyyah</i>
<i>al-A'lām</i>	Al-Ziriklī, <i>al-A'lām; Qāmūs Tarājim li Ashhār al-Rijāl wa al-Nisā'</i>
<i>al-Dībāj</i>	Ibn Farḥūn, <i>Kitāb al-Dībāj al-Mudhahhab fī Ma'rifah A'yān 'Ulamā' al-Madhhab</i>
<i>EI(1)</i>	Encyclopaedia of Islam (1st edition)
<i>EI(2)</i>	Encyclopaedia of Islam (2nd edition)
<i>Elias</i>	Elias A. Elias et al., <i>Elias' Modern Dictionary; Arabic - English</i>
<i>First EI</i>	E.J. Brill's First Encyclopaedia of Islam
<i>Glossary</i>	Maimonides, <i>Glossary of Drug Names</i>
<i>Hans Wehr</i>	Hans Wehr, <i>A Dictionary of Modern Written Arabic</i>
<i>Hava</i>	J.G. Hava, <i>al-Farā'id al-Durriyyah</i> , <i>Arabic-English Dictionary</i>

<i>al-Ḥisbah</i>	Ibn Taymiyyah, <i>al-Ḥisbah fī al-Islām</i>
<i>al-Ḥisbah</i>	Al-Saqaṭī, <i>Kitāb fī Ādāb al-Ḥisbah</i>
<i>IC</i>	Islamic Culture
<i>Iḥyā'</i>	Al-Ghazālī, <i>Iḥyā' 'Ulūm al-Dīn</i>
<i>IQ</i>	The Islamic Quarterly
<i>al-Iṣābah</i>	Ibn Ḥajar, <i>al-Iṣābah fī Tamyiz al-Ṣaḥābah</i>
<i>al-Istī'āb</i>	Ibn 'Abd Barr al-Qurṭubī, <i>al-Istī'āb fī Ma'rifat al-Aṣḥāb</i>
<i>JESHO</i>	Journal of Economic and Social History of the Orient
<i>JRAS</i>	Journal of the Royal Asiatic Society
<i>JSS</i>	Journal of Semitic Studies
<i>al-Kindī</i>	Martin Levey, the Medical Formulary of al-Kindī
<i>Lane</i>	E. W. Lane, Arabic-English Lexicon
<i>Lisān</i>	Ibn Manẓūr, <i>Lisān al-'Arab</i>
<i>Ma'ālim</i>	Ibn al-Ukhuwwah, <i>Ma'ālim al-Qurbah fī Ahkām al-Ḥisbah</i>
<i>Medical</i>	J.S. Graziani, Arabic Medicine in the Eleventh Century
<i>Med. His.</i>	Medical History
<i>Munjid</i>	<i>Munjid fī al-Lughah</i>

<b><i>Quḍāt</i></b>	Al-Khushanī, <i>Quḍāt Qurṭubah wa °Ulamā' Ifrīqiyyah</i>
<b><i>RIEEI</i></b>	Revista del Instituto Egipcio de Estudios Islamicos
<b><i>Rise</i></b>	George Makdisi, <i>Rise of Colleges</i>
<b><i>RSO</i></b>	Revista degli Studi Orientali
<b><i>Ṭabaqāt</i></b>	Makhlūf, <i>Shajarat al-Nūr al-Zakiyyah fī Ṭabaqāt al-Mālikiyyah</i>
<b><i>Tafsīr</i></b>	Al-Ṭabarī, <i>Jamī' al-Bayān fī Ta'wīl al-Qur'ān</i>
<b><i>Tarātīb</i></b>	Al-Kattānī, <i>Nizām al-Ḥukūmah al-Nabawiyyah al-Musammā al-Tarātīb al-Idāriyyah</i>
<b><i>Tartīb al-Madārik</i></b>	Qāḍī °Iyāḍ, <i>Tartīb al-Madārik wa Taqrīb al-Masālik li Ma'rifah A'lām Madhhab Mālik</i>
<b><i>Tārīkh</i></b>	Ibn al-Faraḡī, <i>Tārīkh al-°Ulamā' wa al-Ruwāt li al-°Ilm bi al-Andalus</i>
<b><i>Tārīkh</i></b>	Al-Ṭabarī, <i>Tārīkh al-Rusul wa al-Muluk</i>
<b><i>The text (first)</i></b>	Yahyā ibn °Umar, <i>Kitāb Aḥkām al-Sūq</i>
<b><i>The text (second)</i></b>	Yahyā ibn °Umar, <i>Kitāb al-Nazar wa al-Aḥkām fī Jamī' Ahwāl al-Sūq</i>
<b><i>al-Ṭuruq</i></b>	Ibn Qayyim al-Jawziyyah, <i>al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar'īyyah</i>
<b><i>Risālah</i></b>	Ibn °Abdūn, <i>Risālah fī al-Qaḍā' wa al-Ḥisbah</i>

***Nihāyah***Ibn al-Athīr, *al-Nihāyah fī Gharīb al-Ḥadīth wa al-Athar****Nihāyah***Al-Shayzarī, *Kitāb Nihāyat al-Rutbah fī Aḥkām al-Ḥisbah****Wahbah***Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*

## INTRODUCTION

This thesis attempts to examine the role of market supervision and the development of the function of the *muḥtasib*<sup>1</sup> who becomes identified with the market supervisor. In particular, the thesis will analyse the two texts of the work of Yaḥyā ibn ʿUmar (d. 289/901)<sup>2</sup>, which are entitled *Kitāb Aḥkām al-Sūq*<sup>3</sup> (Book on legal decisions related to the market) and *Kitāb al-Nazar wa al-Aḥkām fī Jamīʿ Ahwāl al-Sūq*<sup>4</sup> (Book on supervision and legal decisions on matters related to the market). It should be noted here that this work of Yaḥyā ibn ʿUmar was the earliest of its kind dealing with the subject of market supervision<sup>5</sup>.

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<sup>1</sup>See Reuben Levy, "The *Muḥtasib*", *EI(1)*. vol. 3, pp. 702-3. Cl. Cahen and M. Talbi, "*Ḥisba*". *EI(2)*. vol. 3, pp. 485-493.

<sup>2</sup>His life and career will be discussed in Chapter One pp. 38-47.

<sup>3</sup>Yaḥyā ibn ʿUmar, "*Kitāb Aḥkām al-Sūq*". ed. M.A. Makkī, in *Revista del Instituto Egipcio de Estudios Islamicos*. vol. 4, 1956. pp. 59-151. This work of Yaḥyā will be referred to as a text of the first version throughout this study.

<sup>4</sup>Yaḥyā ibn ʿUmar, *Kitāb al-Nazar wa al-Aḥkām fī Jamīʿ Ahwāl al-Sūq*, ed. Farḥāt al-Dashrāwī, et al. Tunisia, 1975. This work of Yaḥyā will be referred to as a text of the second version throughout this study.

<sup>5</sup>See Cl. Cahen and M. Talbi, "*Ḥisba*". *EI(2)*. vol. 3, p. 486. However, the writers only mention one text of the work of Yaḥyā ibn ʿUmar, i.e. *Kitāb Aḥkām al-Sūq*.

## 1. Origin of the role of market supervision

There have been many studies carried out by contemporary scholars to trace the possible origin of the role of market supervision in the early and medieval Islamic periods. Amongst these scholars was G.E. Von Grunebaum who suggests that *muḥtasib* was an Islamized version of the Roman *agoranomos* adopted by the Muslim which was known as *ṣāhib al-sūq*<sup>6</sup>. The same was the opinion of Schacht and he suggests that the transformation took place during the ʿAbbāsid period<sup>7</sup>. However, according to Cl. Cahen and M. Talbi, the last inscriptional record of the *agoranomos* dates about three centuries before the Arab conquest<sup>8</sup>. Thus, on this basis, Foster denies the idea of continuity of the Muslim *ṣāhib al-sūq* from the Roman *agoranomos*<sup>9</sup>. In a similar manner, R.P. Buckley traces the role of the market supervisor back to the time of the Prophet<sup>10</sup>.

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<sup>6</sup>G.E. Von Grunebaum, *Classical Islam*, transl. by Katherine Watson, pp. 100-1. However, Crone considered Gaudefroy-Demombynes as the first scholar to suggest that the *muḥtasib* perpetuates a Greco-Roman official which was made in his study in 1939. Patricia Crone, *Roman, Provincial and Islamic law*, 1987, Appendix 3, p. 107. See Gaudefroy-Demombynes, "Sur les origines de la justice musulmane", *Melanges syriens offerts à René Dussaud*, Paris, 1939, vol. ii, p. 828.

<sup>7</sup>Schacht, *Introduction to Islamic Law*, p. 25. Crone, however, suggests that Schacht was only repeating the idea putted forward by Gaudefroy-Demombynes without mentioning his name. Crone, loc.cit. A similar study is made by Nicola Ziadeh, *Urban Life in Syria*, p. 118.

<sup>8</sup>Cl. Cahen and M. Talbi, "*Ḥisba*", *EI*(2), vol. 3, p. 487.

<sup>9</sup>Benjamin Foster, "*Agoranomos and Muḥtasib*", *JESHO*, 1970, pp. 136, 139.

<sup>10</sup>R. P. Buckley, "The *Muḥtasib*", *ARABICA*, 1992, pp. 60-62. Similar studies were carried out by Ishaq Musa al-Husaini, "*Ḥisba in Islam*", *IQ*, 1966, pp. 69-70. Zāfir al-Qāsimī, *Nizām al-Ḥukm fī al-Sharīʿah wa al-Tārīkh al-Islāmī*, 1983, vol. 2, pp. 587-593.

It seems likely that the Prophet who was involved in all aspects of the lives of the Muslims would be concerned with wrongful activities in the market. In this way, al-Ṭabarī suggests that the reason for the revelation of *sūrat al-muṭaffifīn* (chapter 83) was that the Prophet had visited the market and had witnessed vendors dealing fraudulently. As a result of this, according to al-Ṭabarī, their conduct improved when the *sūrah* was revealed to them<sup>11</sup>.

In fact, verses one to six of *sūrat al-muṭaffifīn*<sup>12</sup> which strongly condemns unfair dealing in weights and measures, should give a good reason for responsible persons to ensure that such kind of behaviour and the like would not happen in their market. It was reported that the Prophet had visited the market and found a vendor had watered his grain so that its weight was heavier. So the Prophet said, "He who deceives us is not one of us"<sup>13</sup>. Similarly, ʿUmar ibn al-Khaṭṭāb was also reported to have visited the market and punished those vendors who were found cheating or

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<sup>11</sup>Al-Ṭabarī, *Tafsīr*. vol. 12, p. 483. In defining the word *muṭaffif*, al-Ṭabarī refers to him as a person who gives deficient weights and measures which would involve insufficiency in calculation (*ḥisbah*) and in quantity (*ʿadad*). Ibid.

<sup>12</sup>The verses read, "Woe to those that deal in fraud. Those who, when they have to receive by measure from men, exact full measure. But when they have to give by measure or weight to men, give less than due. Do they not think that they will be called to account ? On a Mighty Day. A Day when all mankind will stand before the Lord of the World ?". *Al-Qurʾān*. 83: 1-6. There are also other verses of the *Qurʾān* which dealt with the matter. In particular, *sūrah* 6: 152, which reads: "Use a full measure and a just balance" and in *sūrah* 7: 85, "Give just weight and measure, and do not withhold from the people the things that are their due and do no evil on the earth".

<sup>13</sup>Al-Tirmidhī, *Sunan*. vol. 3, p. 597. Ibn Mājah, *Sunan*. vol. 2, p. 749.



dealing fraudulently<sup>14</sup>. The same action was taken by 'Alī ibn Abī al-Ṭālib<sup>15</sup>. Yaḥyā ibn 'Umar regards the duty of checking the deficient weights and measures as one of the responsibilities of the market supervisor<sup>16</sup>.

On another occasion, the *Qur'ān* has condemned those who are hoarding their property when it says: "Those who hoard up (*yaknizu*) gold and silver and do not spend them in His way, announce to them a painful torment"<sup>17</sup>. In relation to this verse, al-Bukhārī reported a tradition from the Prophet which explains the meaning of the torment, that they will be resurrected in the form of bald-headed snakes (*shujā' aqra'*)<sup>18</sup>. On this matter, the *Qur'ān* also says in another verse: "What God has bestowed on His Messenger and taken away from the people of the townships, belongs to God, His Messenger, the kindred, the orphans, the needy and the wayfarer; so that the wealth would not be circulated among the wealthy among you"<sup>19</sup>. This seems to be related to the Prophet's denunciation of

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<sup>14</sup>Al-Ṭabarī, *Tārīkh*. vol. 5, p. 23. Ibn al-Jawzī, *Manāqib 'Umar ibn al-Khaṭṭāb*. p. 112.

<sup>15</sup>In fact, much evidence of the practice of 'Alī on this matter can be found in a Zaydī manual of *ḥisbah* by al-Nāṣir li al-Ḥaqq (d. 304 A.H.). Accordingly, Serjeant held that the Zaydī manual is in many occasions referring to the practice of 'Alī, whereas, the Sunnīs' works are mentioning the actions of 'Umar ibn al-Khaṭṭāb. R.B. Serjeant, "A Zaydī manual". *RSO*. p. 7.

<sup>16</sup>Yaḥyā ibn 'Umar, *The text (first)*. p. 105. *The text (second)*. pp. 37, 38, 39.

<sup>17</sup>*Al-Qur'ān*. 9: 34.

<sup>18</sup>Al-Bukhārī, *Ṣaḥīḥ*. vol. 6, p. 146.

<sup>19</sup>*Al-Qur'ān*. 59:7.

those vendors who were hoarding (*iḥtikār*) in order to obtain a higher price. The Prophet was reported as saying: "No one hoards but the traitors (i.e. the sinners)"<sup>20</sup>. ʿUmar ibn al-Khaṭṭāb also deals with the matter, and Mālik ibn Anas reports that he said:

"There is no hoarding in our market, and men who have excess gold in their hands should not buy up one of God's provisions which he has sent to our courtyard and then hoard it up against us. One who brings imported goods through great fatigue to himself in the summer and winter is the guest of ʿUmar. Let him sell what God wills and keep what God wills"<sup>21</sup>.

In the same way, Mālik ibn Anas indicates that ʿUthmān ibn ʿAffān was also reported to have forbidden hoarding<sup>22</sup>. The matter has also been dealt with by Yaḥyā ibn ʿUmar<sup>23</sup>.

It seems that the Prophet's actions were not only intended to protect the purchasers from being victimized by greedy merchants, but also to preserve the rights of the vendors. Thus, in Medina, the Prophet established a free trade market without any tax being charged on the traders. It is mentioned that the Prophet had stamped its ground with his foot and said,

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<sup>20</sup>Ibn Mājah, *Sunan*. vol. 2, p. 728. *Kanz al-ʿUmmāl*. vol. 4, p. 55.

<sup>21</sup>Mālik ibn Anas, *Muwatṭaʾ* (riw. *al-Laythī*). p. 544. See also, *Muwatṭaʾ*, (riw. *al-Suyūṭī*). 2: 69.

<sup>22</sup>*Muwatṭaʾ* (riw. *al-Laythī*). loc.cit. *Muwatṭaʾ* (riw. *al-Suyūṭī*). loc.cit.

<sup>23</sup>Yaḥyā ibn ʿUmar, *The text (first)*. pp. 134-5. *The text (second)*. pp. 113-7.

"This is your market; let it not be narrowed (*fa lā yuḍayyaq*) and let no tax (*kharāj*) be taken on it"<sup>24</sup>. It is believed that the market was established soon after the arrival of the Prophet in Medina<sup>25</sup>. Similarly, in the case of price-fixing (*tas'īr*), the Prophet refused to fix the price for the vendors, even though it was demanded by the public, because such an act would be unjust to them<sup>26</sup>. In the same way, 'Umar ibn al-Khaṭṭāb had visited the market and commanded Ḥātib ibn Abī Balta'ah to raise the price of his raisins or leave the market. However, 'Umar then had second thoughts, so he went to Ḥātib's house and told him that he might sell his raisins as he wished<sup>27</sup>.

Above are the evidences which have clearly indicated that the Prophet and his Companions, especially 'Umar ibn al-Khaṭṭāb and 'Alī ibn Abī al-Ṭālib, had been involved in market supervision. In fact, the Prophet was also reported to have appointed Sa'īd ibn Sa'īd ibn al- 'Āṣ over the market in Mecca (*ista'mala Rasūl Allāh Sa'īd ibn Sa'īd ibn al-'Āṣ ba'd al-*

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<sup>24</sup>Al-Balādhurī, *Futūḥ al-Buldān*. ed. R. M. Riḍwān, pp. 22 and 28. See also Philip K. Hitti, *History of the Arabs*. p. 104.

<sup>25</sup>M. J. Kister, "The market of the Prophet", *JESHO*. 1965, vol. viii, pp. 274, 276.

<sup>26</sup>Abū Dā'ūd, *Sunan*. vol. 2, p. 98. Yaḥyā ibn 'Umar, *The text (second)*. p. 43. Ibn al-Athīr, *Nihāyah*. vol. 2, p. 368.

<sup>27</sup>Al-Muzanī, *Mukhtaṣar*. Printed in al-Shāfi'ī's *al-Umm*. vol. 8, p. 191. Ibn Taymiyyah, *al-Ḥisbah*. p. 19. Ibn Qayyim al-Jawziyyah, *al-Ṭuruq*. p. 261.

*fath al-ā sūq Makkah*<sup>28</sup>. Also, ʿUmar ibn al-Khaṭṭāb appointed al-Saʿīd ibn Yazīd and ʿAbd Allāh ibn ʿUtbah ibn Masʿūd over the market in Medina<sup>29</sup>. Later, ʿUthmān ibn ʿAffān is said to have appointed al-Ḥārith ibn al-Ḥakam over the market in Medina<sup>30</sup>. Thus, during this time, the person appointed to the duty of market supervision was known as *ʿāmil al-ā al-sūq*, as was mentioned by Saʿīd himself when he said that he was an *ʿāmil al-ā al-sūq* in the time of ʿUmar<sup>31</sup>. It is interesting to notice that the word *istāʿmala* which is derived from *ʿamila* was used to denote the appointment of Saʿīd ibn Saʿīd by the Prophet. The term *ʿāmil* had, in fact, been used to refer to other officials appointed by the Prophet and the early caliphs<sup>32</sup>. In this way, it was reported that the Prophet sent ʿAlī ibn Abī Ṭālib as an *ʿāmil* to collect taxes<sup>33</sup>. Later the term *ʿāmil* had been used

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<sup>28</sup>Ibn ʿAbd al-Barr al-Qurṭubī, *al-Istīʿāb fī Maʿrifat al-Aṣḥāb*. Printed on the margin of Ibn Ḥajar al-ʿAsqalānī, *al-Iṣābah fī Tamyiz al-Ṣaḥābah*. vol. 1, p. 285.

<sup>29</sup>Ibn Sallām, *Kitāb al-Amwāl*. p. 533. Ibn ʿAbd al-Barr al-Qurṭubī, *al-Istīʿāb*. vol. 2, p. 576. *Kanz al-ʿUmmāl*. vol. 5, p. 815.

<sup>30</sup>Al-Balādhurī, *Ansāb al-Ashrāf*. vol. 5, p. 47.

<sup>31</sup>Ibn Sallām, *Kitāb al-Amwāl*. op.cit.

<sup>32</sup>In this manner, A. Aziz Duri maintained that the term *ʿāmil* signifies tax-collectors, agents and prefects who were appointed by the government. In its literal meaning, the word *ʿāmil* denotes the Muslim who performs the works demanded by his faith, and is often used in conjunction with the term *ʿālim* as an epithet of pious scholars. Technically, the term *ʿāmil* has two meanings: one of which signifies an active partner in a contract of *muqārabah* and *qirāq*, whereas the other meaning refers to a government agent or official, in particular the collector of taxes. In the second meaning, it is found that the Prophet had appointed representatives among the tribes or in the areas under his authority in order to collect *zakāt* from Muslims and the tribute from non-Muslims, some of whom had political duties. A.A. Duri, "*ʿĀmil*". *EI(2)*. vol. 1, pp. 435-6.

<sup>33</sup>See Watt, *Muḥammad in Medina*. Appendix pp. 366-7.

to refer to a provincial governor or administrator. This meaning seems to be found during the caliph ʿUmar ibn al-Khaṭṭāb<sup>34</sup>.

Apart from the *ʿāmil ʿalā al-sūq*, there was another official known as *ʿarīf* who was also believed to have been involved in some aspects of market supervision. Ibn Manẓūr defines the *ʿarīf* as follows: "He is in charge of his group or clan, dealing with their social affairs and keeping the ruler informed of the particulars of his people<sup>35</sup>. In fact, the position of *ʿarīf* was known in the pre-Islamic period<sup>36</sup>. Thus, Muhammad Yusuf Faruqi suggests that the Prophet maintained the practice of *ʿarāfah* as a social institution and utilized it in establishing the social system of Islam<sup>37</sup>. The Prophet was reported to have appointed some of his Companions as *ʿarīf*<sup>38</sup>. During the time of the Prophet and the early caliphs, the *ʿarīf* was the leader of his people and occasionally he collected the *zakāt* from them. It seems that from the time of ʿUmar ibn al-Khaṭṭāb onwards the *ʿarīf* had been given military authority and he was also responsible for the interests

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<sup>34</sup>A.A. Duri, op.cit.

<sup>35</sup>Ibn Manẓūr, *Lisān*. 11: 143.

<sup>36</sup>Saleh A. El-Ali and Cl. Cahen, "ʿArīf". *EI(2)*. vol. 1, p. 629. Muhammad Yusuf Faruqi, "Social and political practices at the time of the Prophet: A study of the institution of *ʿarāfah* and *naqabah*". in *Essays on Islam*. ed. by H.M. Said. p. 200.

<sup>37</sup>M.Y. Faruqi, loc.cit. p. 201.

<sup>38</sup>See Aḥmad ibn Ḥanbal, *Musnad*. vol. 3, p. 215. Ibn Ḥajar al-ʿAsqalānī, *al-Iṣābah*. vol. 1, p. 251. Al-Kattānī, *Tarātib*. vol. 1, p. 236.



of orphans and foundlings<sup>39</sup>. On some occasions, it is mentioned that the *ʿarīf* was also concerned with *ahl al-dhimmah*. However, the most frequent use of the title of *ʿarīf* in the medieval period is to denote the head of a guild, who is usually referred to in the West as *amīn*. It should be noted here that later during the 6th century A.H., *ʿarīf* and *amīn* were mentioned in *ḥisbah* manuals where they became assistants to the *muḥtasib*<sup>40</sup>.

Earlier on, the *ʿāmil ʿalā al-sūq* was known as *ṣāḥib al-sūq* and occasionally *nāẓir ʿalā al-sūq*. The work of Yaḥyā ibn ʿUmar (d. 289/901) has provided some useful evidences concerning the matter. It is mentioned that the market supervisor during his time was known as *ṣāḥib al-sūq* and *nāẓir ʿalā al-sūq*<sup>41</sup>. It is indicated that Yaḥyā ibn ʿUmar was asked in person by the *ṣāḥib al-sūq* (market supervisor) of Sūsah (Sousse)<sup>42</sup>, while a written petition was made to him by the *ṣāḥib al-sūq* of Qayrawān<sup>43</sup>. Yaḥyā ibn ʿUmar also referred to the market supervisor during the time of

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<sup>39</sup>Thus, al-Bukhārī relates that a man called Abū Jamīlah went to ʿUmar ibn al-Khaṭṭāb in order to apply for an allowance for a baby. The baby was a foundling (*laqīṭ*) of an unknown parent. At first ʿUmar suspected the veracity of his claim, but when his *ʿarīf* told ʿUmar that Abū Jamīlah was a good person (*innahu rajul ṣāliḥ*), ʿUmar was satisfied and he granted his request. Al-Bukhārī, *Ṣaḥīḥ*. vol. 1, p. 231.

<sup>40</sup>Saleh A. El- Alī and Cl. Cahen, "ʿArīf". *EI*(2). vol. 1, p. 629.

<sup>41</sup>Yaḥyā ibn ʿUmar, *The text (first)*. pp. 103, 108, 112, 128 and 129. *The text (second)*. pp. 31-2, 33-4, 37, 38, 40, 47, 57, 73, 96, 98, 103, 104 and 115.

<sup>42</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 129. *The text (second)*. p. 98.

<sup>43</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 128. *The text (second)*. p. 96.

Mālik ibn Anas as *ṣāhib al-sūq*<sup>44</sup>. As for the title *nāzir ʿala al-sūq*, Yaḥyā ibn ʿUmar seems to refer to him when explaining the theory of the person responsible for carrying out the role of market supervision. Thus, it seems that the term *nāzir ʿalā al-sūq* was also used to denote the Governor (*wālī*) and the *qāḍī* who were supervising the market<sup>45</sup>. This is because Yaḥyā ibn ʿUmar maintained that the market supervision was the responsibility of the Governor, the *qāḍī* and the market supervisor. On this basis, it seems probable that during the time of Yaḥyā ibn ʿUmar, the institution of *ḥisbah* was only at a preliminary stage. In this way we find that the later *ḥisbah* literature have shown some resemblances to this work of Yaḥyā ibn ʿUmar, especially in matters dealing with the duties to be carried out by the *muḥtasib* and the penalties for offenders. Thus, this work of Yaḥyā ibn ʿUmar has provided evidence for the origin of the *muḥtasib* who was believed to have inherited the role of the former *ṣāhib al-sūq*. However, there seems to be no clear evidence to suggest when the transformation from *ṣāhib al-sūq* to *muḥtasib* took place.

Earlier on, al-Balādhūri seems to indicate that the office of *muḥtasib* was introduced by the Umayyad Caliph Hishām ibn ʿAbd al-Malik (reg. 105/724-125/743), who entrusted the duty of *ḥisbah* over the market to

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<sup>44</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 132. *The text (second)*. pp. 77, 103.

<sup>45</sup>Yaḥyā ibn ʿUmar, *The text (second)*. pp. 47 and 73.

Mahdī ibn ʿAbd al-Raḥmān and later to Iyās ibn Muʿāwiyah<sup>46</sup>. During the ʿAbbāsīd period, al-Ṭabarī mentioned that in 157/774 caliph al-Manṣūr (reg. 136/754-158/775) appointed Abū Zakariyyā<sup>47</sup> Yaḥyā ibn ʿAbd Allāh to be in charge of *ḥisbah*, and he was held responsible for the market of Baghdād. It should be noted that al-Ṭabarī referred to him as *muḥtasib*, and the post was known as *ḥisbah*<sup>47</sup>. On another occasion, he also referred to Abū Zakariyyā<sup>48</sup> Yaḥyā ibn ʿAbd Allāh as a *muḥtasib*<sup>48</sup>. Al-Ṭabarī also indicates that the institution of *muḥtasib* continued during the caliphate of al-Mahdī (reg. 158/775-169/785), where ʿAbd al-Jabbār was known to be the holder of the position<sup>49</sup>. Likewise, Stanley Lane-Poole suggests that Ismāʿīl ibn Ṣāliḥ ibn ʿAlī al-ʿAbbāsī was believed to have been appointed to the office in 169 A.H.<sup>50</sup> However, Ismāʿīl was also believed to be an *ʿāmil al-kharaj* (tax collector) or a *ṣāḥib al-shurṭah* (police)<sup>51</sup>. Perhaps the most celebrated ʿAbbāsīd *muḥtasib* was Abū Saʿīd al-Iṣṭakhrī who lived during the reign of the caliph al-Muqtadir (reg. 295/908-320/932). However Abū

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<sup>46</sup>Sihām citing al-Balādhurī, *Ansāb al-Ashrāf*, manuscript, p. 290. Sihām Abū Zayd, *al-Ḥisbah fī Miṣr*, p. 63. I have not been able to check this reference.

<sup>47</sup>Al-Ṭabarī, *Tārīkh*, ed. M. Abū al-Faḍl Ibrāhīm, vol. 7, p. 653. See also al-Ṭabarī, *The History of al-al-Ṭabarī*, transl. by Hugh Kennedy, vol. xxix, p. 9.

<sup>48</sup>Al-Ṭabarī, *Tārīkh*, vol. 8, p. 52. See also transl. by Hugh Kennedy, loc.cit. p. 78.

<sup>49</sup>Al-Ṭabarī, *Tārīkh*, loc.cit. See also trans. by Hugh Kennedy, loc.cit. p. 214.

<sup>50</sup>Stanley Lane-Poole, *A History of Egypt in the Middle Ages*, London, 1925, vol. vi, p. 53. See also Sihām Muṣṭafā Abū Zayd, *al-Ḥisbah fī Miṣr*, 1986, p. 62.

<sup>51</sup>Sihām Abū Zayd, loc.cit.



Saʿīd was also a *qāḍī*<sup>52</sup>. Earlier on, it is also mentioned that Saḥnūn ibn Saʿīd (d. 240 A.H.) had performed the function of *ḥisbah* when he was appointed as a *qāḍī*<sup>53</sup>. It should be noted here that Saḥnūn ibn Saʿīd was a teacher of Yaḥyā ibn ʿUmar. Given the fact that the institution of *ḥisbah* seems to have originated during this period, it is more likely that the *muḥtasib* was affiliated to the office of a *qāḍī*. In other words, an independent office of *muḥtasib* seems not yet to have been created. Thus, we find al-Nāṣir li al-Ḥaqq (d. 304/917), the author of *Kitāb al-Iḥtisāb* maintains that *ḥisbah* denotes a complete manifestation of the acts of the *qāḍī*<sup>54</sup>. It should be noted that al-Nāṣir was the first author of a *ḥisbah* manual to use the word *ḥisbah*, *iḥtisāb* and *muḥtasib*.

Presumably, an independent office of *muḥtasib* could have been evolved by the time of al-Māwardī (d. 450/1058). In this connection, al-Māwardī points out that *ḥisbah* is equal to the institution of *qāḍī*<sup>55</sup>, where the *muḥtasib* is capable of hearing complaints in matters concerning weights and measure, cheating in selling and non-payment of debt.

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<sup>52</sup>See al-Māwardī, *Aḥkām*. p. 241. Ibn al-Ukhuwwah, *Maʿālim*. p. 9.

<sup>53</sup>Saḥnūn is said to have visited the market and penalised the vendors who dealt in fraud and were found cheating by removing them from the market. He also used to beat the litigants who caused harm to the opponent or the witnesses. Qāḍī ʿIyād, *Tartīb al-Madārik*. 2: 600. Ibn Farḥūn, *Al-Dībāj*. p. 163. See Makhlūf, *Ṭabaqāt*. pp. 69-70. See also S.M. Abū Zayd, *al-Ḥisbah fī Miṣr*. p. 63. Pedro Chalmeta, "La Ḥisba en Ifriqiya et al-Andalus". *Cahiers de Tunisie*. p. 88. Thus, Yaḥyā ibn ʿUmar has clearly mentioned that market supervision was the responsibility of the Governor, the *qāḍī* and the market supervisor. Yaḥyā ibn ʿUmar, *The text (second)*. p. 47.

<sup>54</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11.

However, the *muḥtasib* is not able to administer oaths or hear evidence. The *muḥtasib* is in fact, considered as a subordinate to the *qāḍī*<sup>55</sup>. On this basis, a conclusion could be drawn that when an independant office of a *muḥtasib* was established it inherits not only the duties of the market supervisor but also some elements which were taken from the *qāḍī*, the Governor and the Caliph.

## 2. Definition of *ḥisbah*

### 2.1. Literal meaning of *ḥisbah*

According to Ibn Manẓūr, the word *ḥisbah* is an infinitive of the verb *iḥtasaba, yaḥtasibu, iḥtisāban* which has several meanings. Firstly it means to anticipate God's reward<sup>56</sup>. This meaning is found in the tradition of the Prophet concerning the fasting in *Ramaḍān*, in which he said, "He who fasts *Ramaḍān* because of his faith in God and that he is anticipating for His reward (*iḥtisāban*), God will forgive his previous sins"<sup>57</sup>.

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<sup>55</sup>Al-Māwardī, *Aḥkām*. p. 241. The same statement was made by Ibn al-Farrā', *Aḥkām*. pp. 269-270. Ibn al-Ukhuwwah, *Ma'ālim*. pp. 9-10.

<sup>56</sup>Ibn Manẓūr, *Lisān*. 1: 305. Al-Sunāmī, *Niṣāb al-Iḥtisāb*. p. 2. Ibn 'Abdūn, *Risālah*. p. 8.

<sup>57</sup>Ibn Manẓūr. loc.cit. See Bukhārī, *Ṣaḥīḥ*. vol. 1, p. 92. Ibn al-Athīr, *Nihāyah*. vol. 1, p. 382.

The second meaning of *iḥtasaba, yaḥtasibu* is to denounce (*inkār*) other persons' wrongful behaviour<sup>58</sup>.

The third meaning of the word *iḥtasaba, yaḥtasibu* is to contemplate by considering the possibility of its outcome. This meaning can be found in three verses of the *Qur'ān*. In the first verse, it reads, "... and the person who fears God. God prepares for him a way out and He provides (with things) from sources he never could imagine (*yaḥtasibu*)"<sup>59</sup>. In the second verse, the *Qur'ān* says, "Even if the wrongdoers had all that there is on earth, and as much more, would they offer it for ransom from the pain of the penalty on the Day of Judgement, but something from God will confront them which they could never have expected (*yaḥtasibu*)"<sup>60</sup>. Finally, in the third verse, it reads, "... but (the wrath of) God came to them from quarters from which they never have expected (*yaḥtasibu*)"<sup>61</sup>.

The fourth meaning of the word *ḥisbah* which derived from *ḥasaba, yaḥsibu, ḥisāb* and *ḥasīban* is to calculate, estimate and take an account<sup>62</sup>. In fact, this meaning is found in three verses of the *Qur'ān*. In

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<sup>58</sup>Al-Sunāmī, op.cit.

<sup>59</sup>*Al-Qur'ān*. 65: 2-3.

<sup>60</sup>*Al-Qur'ān*. 39: 47.

<sup>61</sup>*Al-Qur'ān*. 59: 2.

<sup>62</sup>Ibn Manẓūr, *Lisān*. 1: 304. Al-Sunāmī, *Niṣab al-Iḥtisāb*. p. 2. Lane. 1: 564. *Hans Wehr*. p. 175.

the first verse, it reads, "If the guardian is well-off, let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable. When you release their property to them, take witnesses in their presence, but all sufficient is God in taking account (*ḥasība*)"<sup>63</sup>. In another verse, the *Qur'ān* says, "(It will be said to him:) Read your (own) record. Sufficient is your soul this day to make out an account (*ḥasība*) against you"<sup>64</sup>. In the third verse it reads, "(It is the practice of those) who preach the messages of God and fear Him, and fear None but Him and enough is God to call (men) to account (*ḥasība*)"<sup>65</sup>.

The word *ḥāsaba*, *yuhāsibu*, *muḥāsabah* means to examine one's conscience. This meaning can be found in the case of ʿUmar ibn al-Khaṭṭāb who had ordered Ḥātīb ibn Abī Baltaʿah to either raise the price of his raisins or leave the market. However, when the two had departed, ʿUmar examined his conscience (*ḥāsaba nafsahu*), so he went to Ḥātīb's house and said to him that his previous statement was not correct and that he might sell his raisins as he preferred<sup>66</sup>.

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<sup>63</sup> *Al-Qur'ān*. 4: 6.

<sup>64</sup> *Al-Qur'ān*. 17: 14.

<sup>65</sup> *Al-Qur'ān*. 33: 39. See also ʿAbd al-Bāqī, *Al-Muʿjam al-Mufahras li al-Alfāz al-Qur'ān al-Karīm*. pp. 200-1.

<sup>66</sup> Al-Muzanī, *al-Mukhtaṣar*. Printed in al-Shafiʿī's *al-Umm*. vol. 8, p. 191. Ibn Qayyim, *al-Ṭuruq*. p. 263. See *Hans Wehr*. p. 176 (*muḥāsabah*).

*Hisbah* also means conduct, supervision or management (*al-tadbīr aw al-naẓar*)<sup>67</sup>. In this way, the phrase *fulān ḥasuna ḥisbatuhu* can be translated as a person who has a good conduct or management of his subject<sup>68</sup>.

Apart from the above meanings, the word *ḥisbah* has also been used to signify the contentment of a person in the face of misfortune. In this manner, Mālik ibn Anas has reported traditions of the Prophet which are referring to this meaning. In one of the traditions, the Prophet said; "If three of a Muslim's children die and he remains content with that (*yaḥtasibu*) they will be a protection for him from the Fire"<sup>69</sup>.

## 2.2. Technical meaning of *ḥisbah*

Al-Nāṣir li al-Ḥaqq maintains that *ḥisbah* denotes a complete manifestation of the acts of the *qaḍā'* and the source of knowledge which originates from the understanding of God's supremacy<sup>70</sup>. Al-Māwardī defines *ḥisbah* as enjoining what is right when it is found to be neglected

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<sup>67</sup>Ibn Manẓūr, *Lisān*. 1: 307. Al-Sunāmī, *Niṣāb al-Iḥtisāb*. p. 2.

<sup>68</sup>Ibn Manẓūr, loc.cit. Al-Sunāmī, loc.cit.

<sup>69</sup>Mālik ibn Anas, *Muwatṭa'* (*riw. al-Laythī*). pp. 188-190. See also transl. pp. 115-6.

<sup>70</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11.

and forbidding what is wrong when it is found to be practised<sup>71</sup>. The same definition was made by Ibn al-Farrā<sup>72</sup> and al-Sunāmī<sup>73</sup>. Al-Ghazālī describes *ḥisbah* as a "comprehensive expression" (*ʿibārah shāmilah*) for the duty of enjoining the good and forbidding evil<sup>74</sup>. Al-Shayzarī maintains that *ḥisbah* is an act of enjoining the good and forbidding the evil as well as making an improvement to the living condition of the public<sup>75</sup>. This definition was then adopted by Ibn al-Ukhuwwah<sup>76</sup>. According to Ibn al Khaldūn, *ḥisbah* falls under the religious obligation "to enjoin the good and forbid evil"<sup>77</sup>.

From the above definitions, it seems that the Muslim scholars in medieval Islam have one common technical definition of *ḥisbah*, that it is to enjoin the good and forbid evil. In relation to this, al-Sunāmī argues that this technical meaning of *ḥisbah* does correspond to its literal meanings.

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<sup>71</sup>Al-Māwardī, *Aḥkām*. p. 240.

<sup>72</sup>Ibn al-Farrā<sup>1</sup>. *Aḥkām*. p. 268.

<sup>73</sup>Al-Sunāmī, *Niṣāb al-Iḥtisāb*. p. 2. Al-Sunāmī has clearly indicated that the meaning was found in *Kitāb al-Aḥkām al-Sulṭāniyyah*; however, he did not mention whether he is referring to al-Māwardī or Ibn al-Farrā<sup>1</sup>.

<sup>74</sup>It is therefore can be concluded that whenever al-Ghazālī mentions the word *ḥisbah*, he is referring to the duty of enjoining the good and forbidding evil. Al-Ghazālī, *Iḥyā<sup>1</sup>*. p. 398. Al-Ghazālī also seems to give another description of *ḥisbah*. He says, "the function of *ḥisbah* is considered as a prevention against the wrongful acts involving the right of God (*ḥaqq Allāh*)". Al-Ghazālī, *Iḥyā<sup>1</sup>*. p. 418.

<sup>75</sup>Al-Shayzarī, *Nihāyah*. p. 6.

<sup>76</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 7.

<sup>77</sup>Ibn Khaldūn, *Muqaddimah*. trans. F. Rosenthal, vol 1, pp. 462-3.



This is because the *muḥtasib* who is enjoining the good and forbidding the evil is in fact, anticipating God's reward<sup>78</sup>. Similarly, the *muḥtasib* is also denouncing other people's wrong behaviour, so that he would be able to enjoin the neglected good deed and forbid the prevailing evil<sup>79</sup>. Al-Nāṣir li al-Ḥaqq maintained that the reason for the official being called *muḥtasib* is because he is in fact, examining his conduct (*muḥtasibun*) so that it would not be contradict God's wills<sup>80</sup>. In this way al-Sunāmī argues that the *muḥtasib* is also managing (*tadbīr*) the conduct of his subject because he is maintaining the revealed law (*iqāmat al-sharʿ*). As a result, al-Sunāmī held that according to some opinions, the institution of a *qāḍī* is regarded as having some form of *ḥisbah*, i.e. because the *qāḍī* also aims to preserve the revealed law (*sharīʿah*)<sup>81</sup>. The latter statement of al-Sunāmī seems to be quite true because *ḥisbah* had been translated by the medieval Muslim scholars by a general term of "enjoining the good and forbidding evil". This, in fact, was a term used by the *Qurʾān* to call all Muslims to their duty which reads, "Let there be among you, a people inviting others to do good, enjoining what is right and forbidding what is wrong"<sup>82</sup>. In this manner,

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<sup>78</sup>Al-Sunāmī, *Niṣāb al-Iḥtisāb*. pp. 2-3.

<sup>79</sup>Ibid.

<sup>80</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11.

<sup>81</sup>Al-Sunāmī, op.cit. This statement of al-Sunāmī had then been referred to by later scholars, such as Ḥājī Khalīfah, *Kashf al-Zunūn*. vol. 1, p. 16.

<sup>82</sup>*Al-Qurʾān*. 3:104. H.F. Amedroz goes further, suggesting that it is due to this Quranic verse which imposed the duty of enjoining good and forbidding evil, that the jurisdiction of *ḥisbah* is based upon. Amedroz, *JRAS*. p. 77.

al-Juwaynī held that the revealed law (*sharīʿah*) from the beginning to the end is about enjoining the good and forbidding evil<sup>83</sup>. Similarly, Ibn Taymiyyah maintained that the purpose of all authorities (*wilāyāt*) in Islam is to enjoin the good and forbid the evil, whether it be the greater military authority (*wilāyat al-ḥarb al-kubrā*), the police (*shurṭah*), the *qaḍāʾ*, the treasury or the *ḥisbah* authority<sup>84</sup>. Therefore, by defining *ḥisbah* as enjoining the good and forbidding evil, it would seem to generalise the meaning to embrace other institutions as well as the public. Thus, it seems this is not the specific definition of the institution of *ḥisbah*.

In relation to this, although the words *ḥisbah* and *muḥtasib* were not found in the work of Yaḥyā ibn ʿUmar, there are, in fact, three main elements of the discussions which correspond to the later *ḥisbah* works. These elements are the person responsible for the duty of supervising the market and other related matters, the duties to be carried out and the penalties. Thus, judging by these three elements, the institution of *ḥisbah* could be defined as follows: An institution governed by public authorities and later entrusted to an official called *muḥtasib* to supervise matters mostly related to economic activities in the market, but also concerned with moral and religious behaviour, as well as the health and administration of the city. The aim of this supervision is to bring these matters into

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<sup>83</sup>Al-Juwaynī, *al-Ghiyāthī*. pp. 237-8.

<sup>84</sup>Ibn Taymiyyah, *al-Ḥisbah*. p. 13.



conformity with the applications of Islamic law and punish those who violate them. Based on this definition, it seems the word *ḥisbah* signifies a set of rules or systems involving the above matters, whereas *iḥtisāb* could refer to an act of a person who is applying the rule.

Crone suggests that *muḥtasib*, meaning calculator, is a loan translation of the Jewish term *hasban*. In this way she seems to suggest that it represents evidence for a strong Jewish influence on Islamic institutions<sup>85</sup>. Her evidence for the early use of the term is non-existent. It will already have been noticed that the earliest evidence for the term which we have been able to find goes back to Hishām some a hundred year after the death of the Prophet<sup>86</sup>. As we have already discussed, all the earlier reports of people involved in the supervision of the market use the words; *ʿāmil ʿalā al-sūq*, *ṣāḥib al-sūq* and *nāẓir ʿalā al-sūq*<sup>87</sup>. So far, Crone's attempt to see this institution as an early Jewish influence on the formation of an Islamic institution is very weak.

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<sup>85</sup>Patricia Crone, *Roman, Provincial and Islamic law*. Appendix , pp. 107-8.

<sup>86</sup>See previous discussion pp. 10-11.

<sup>87</sup>See previous discussion pp. 7-10.

### 3. Review of literature by medieval Muslim scholars

Several prominent Muslim scholars have dealt with the subject of market supervision, usually under the title *ḥisbah*, and many of these were regarded as amongst the most celebrated jurists of their time. It is generally accepted that their works can be divided into two categories<sup>88</sup>. The first are the works of the jurists focusing on the legal perspective, whereas the second deals with the subject from the practical point of view, and such books were mostly written for the *muḥtasibs*, as a manual for them in carrying out the duty of *ḥisbah*. However, it seems probable that the works in the second category (i.e. the *ḥisbah* manuals) are substantially derived from those of the jurists. Thus, we find that the works of al-Māwardī and al-Ghazālī have been consistently referred to by the authors of *ḥisbah* manuals. Among the best known surviving works of these scholars of the two categories are the following:

i) *Kitāb Aḥkām al-Sūq* and *Kitāb al-Nazar wa al-Aḥkām fī Jamīʿ Ahwāl al-Sūq* of the Mālikī scholar of North Africa Yaḥyā ibn ʿUmar (d. 289/901). The first text which is entitled *Kitāb Aḥkām al-Sūq* (Book on legal decisions related to the market) was transmitted by Ibn Shibl. The second text was transmitted by Aḥmad al-Quṣarī with the title *Kitāb al-Nazar wa*

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<sup>88</sup>See for instance, Cl. Cahen and M. Talbi, *EI(2)*. vol. 3, p. 486. See also Abdalla Mansy Omari, *The Market Society of Greater Syrian Cities in the Later Middle Ages*. Unpublished Ph.D Thesis. University of Wisconsin-Milwaukee, 1986 p. 25.

*al-Aḥkām fī Jamīʿ Ahwāl al-Sūq* (Book on supervision and legal decisions on matters related to the market). According to the editors of the two texts, the text of the second version is more complete than the first. However, this statement seems to be not accurate because both texts are, actually, very similar. In fact, on certain occasions, the first version has provided some useful information which is not found in the second. This work was a compilation of legal opinions of Yaḥyā ibn ʿUmar who was asked mostly by his students; these were transmitted by Ibn Shibl and Aḥmad al-Quṣarī and committed to writing by the students of the transmitters. An analysis of the two texts is provided in chapter one and a paraphrase is made in chapter two of this thesis.

ii) *Kitāb al-Iḥtisāb* of al-Naṣir li al-Ḥaqq (d. 304/917) the Persian Zaydī Imām of Āmul. This author seems to introduce for the first time the terms *ḥisbah*, *iḥtisāb* and *muḥtasib*<sup>89</sup>. He claims that the text is derived from the traditions of the Prophet and those of ʿAlī ibn Abī Ṭālib. The text was edited and analysed by R.B. Serjeant in 1953<sup>90</sup>.

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<sup>89</sup>However, see the previous discussion p. 10.

<sup>90</sup>R.B. Serjeant. "A Zaydī Manual of *Ḥisbah* of the 3rd Century (H)", *RSO*. pp. 1-34.

iii) *Kitāb al-Aḥkām al-Sulṭāniyyah wa al-Wilāyah al-Dīniyyah* of al-Māwardī (d. 450/1058)<sup>91</sup>. The author has discussed *ḥisbah* in his final chapter entitled *fi Aḥkām al-Ḥisbah* (a chapter on the laws of *ḥisbah*). This is considered as the earliest comprehensive work on *ḥisbah*, which consists of the definition, the differences between an official and a voluntary *muḥtasib*, and the qualifications and the duties of the *muḥtasib*. This chapter was translated into English by H.F. Amedroz<sup>92</sup>. It should be noted here that al-Māwardī's discussion in an earlier chapter on the punishment of *ta'zīr* (discretionary punishment) is also significant and relevant to this study, for it is found that Ibn al-Ukhuwwah has frequently quoted from this section.

vi) *Kitāb al-Aḥkām al-Sulṭāniyyah* of Ibn al-Farrā' (d. 458/1066)<sup>93</sup>.

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<sup>91</sup>Abū al-Ḥasan 'Alī ibn Muḥammad ibn Ḥabīb, a Shāfi'ī jurist, born in Baṣrah in 364/974 and died in Baghdād on 30 Rabī' al-Awwal 450/27 May 1058, aged 86 years. Upon completing his studies, he became a teacher. Later on, due to his notable expertise, owing to the extent and the variety of his knowledge, he was appointed as a *qāḍī* and was subsequently, awarded the honorific surname (*laqab*) of *aqḍā al-quḍāt* or supreme *qāḍī*. Apart from that, he was the author of several works and perhaps his most celebrated one deals with constitutional law, entitled *Kitāb al-Aḥkām al-Sulṭāniyyah*, which is the subject of this study. It is also known that his father was a manufacturer and seller of rose-water which is believed to be the reason for his name. See *EI(1)*. vol. 3. p. 416. *EI(2)*. vol. 3. p. 869. *First EI*. vol. 5, p. 416. It is said that he studied law under Abū Ḥāmid al-Isfarā'inī (d. 406/1015). See Muṣṭafā al-Saqqā', Introduction to *Adab al-Dunya wa al-Dīn* of al-Māwardī. p. 2. See also Makdisi, *Rise*. p. 4. A.K.S. Lambton, *State and Government*. p. 83.

<sup>92</sup>Al-Māwardī, *Aḥkām*. Cairo. 1973, chapter twenty, pp. 240-259. H.F. Amedroz, "The *Ḥisba* Jurisdiction in the *Aḥkām Sulṭāniyyah* of al-Māwardī" *JRAS*. 1916. pp. 77-101.

<sup>93</sup>Muḥammad ibn al-Ḥusayn ibn Muḥammad ibn Khalaf ibn Aḥmad ibn al-Farrā' al-Baghdādī al-Ḥanbalī, also known as qāḍī Abū Ya'la. He was one of the masters of the Ḥanbalī school in Baghdād, born in Muḥarram 380/April 990 and died on 19 Ramaḍān 458/15 August 1066. His father (d. 390/1000), who was a Ḥanafī and held the office of notary (*shahīd*), was said to have refused the office of *qāḍī al-quḍāt*. It was in the Ḥanbalī doctrine, however, the young Ibn al-Farrā' was trained and it is said that he even became the favourite disciple of Ibn

Al-Māwardī and Ibn al-Farrā' are contemporaries, and both deal with *ḥisbah* in a similar way. In fact, their works are almost the same, in both the title and the contents. The differences can only be found on a few points of law, for the former was a Shāfi'ī, whereas the latter was a Ḥanbalī. However, both were said to belong to the entourage of the vizier Ibn al-Muslimah<sup>94</sup>.

v) *Iḥyā' 'Ulūm al-Dīn*<sup>95</sup> of al-Ghazālī (d. 505/1111)<sup>96</sup>. The author's treatment on *ḥisbah* is found in the section entitled "*Kitāb al-amr bi al-ma'rūf wa al-nahy 'an al-munkar*" (Book of enjoining the good and forbidding the evil). In fact al-Ghazālī is actually dealing with the requirement of all Muslims "to enjoin the good and forbid evil", but the fact is that this was the particular duty of the *muḥtasib*, so that al-Ghazālī frequently refers to the office of *ḥisbah* in this section and in fact the whole

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al-Ḥāmid (d. 403/1013), with whom he studied the famous *Mukhtaṣar* of al-Khiraqī (d. 363/974). H. Laoust, *EI(2)*. vol. 3 pp. 765-6. See also, Introduction to *al-Aḥkām al-Sulṭaniyyah*. pp. 33, 37. Makdisi. *Rise*. p. 221.

<sup>94</sup>Ibn al-Farrā', *Aḥkām*. Cairo. 1938, chapter twenty, pp. 268-292. H. Laoust. Ibid. See also Cl. Cahen. "Ibn al-Muslima", *EI(2)*. vol. 3 pp. 891-2.

<sup>95</sup>Volume two. pp. 391-455.

<sup>96</sup>Abū Ḥāmid Muḥammad ibn Muḥammad al-Ṭūsī al-Shāfi'ī (450/1058 - 505/1111). Al-Ghazālī was born in Ṭūs and studied in Nishāpūr from 471/1078 to 478/1085 under Imām al-Ḥaramayn al-Juwaynī (419/1028 - 499/1105). In 478/1085 he became attached to Niẓām al-Mulk, then Malikshāh's vizier and in 484/1091 he became *mudarris* of the Niẓāmiyyah *madrasah* in Baghdād, where he taught Shāfi'ī law. He remained in Baghdād until 488/1095, when he withdrew from public affairs. After leaving Baghdād, he spent some time in Damascus before returning to Ṭūs. Later he became *mudarris* of the Niẓāmiyyah *madrasah* in Nishāpūr. See *EI(1)*. vol 3, pp. 146-9. *EI(2)*. vol 2, pp. 1038-1041. *First EI*. vol. 3, pp. 146-9. See also T.J. Winter, Introduction to al-Ghazālī in *The remembrance of death and afterlife*. pp. xv-xvi. Lambton, *State and Government*. pp. 107-8.



discussion actually applies to the office<sup>97</sup>. This is confirmed by the manual of *ḥisbah* by Ibn al-Ukhuwwah, who frequently quotes passages from this section of al-Ghazālī<sup>98</sup>. It should be noted here that al-Ghazālī has provided some significant contribution to the understanding of *ḥisbah* which al-Māwardī and Ibn al-Farrā' have neglected, particularly on matters dealing with elements of *ḥisbah* and its stages as well as on issues relating to the manners of the *muḥtasib*. This is clearly demonstrated in the work of Ibn al-Ukhuwwah who frequently refers to this section.

vi) *Kitāb fī Ādāb al-Ḥisbah*<sup>99</sup> of al-Saqāṭī (ca. 500/1100)<sup>100</sup>, the Andalusian scholar of Mālaqa. Al-Saqāṭī's full name is Abū 'Abd Allah Muḥammad ibn Abī Muḥammad al-Saqāṭī and he was a *muḥtasib*. He speaks generally about the laws and practices for the industrialists,

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<sup>97</sup>This is because al-Ghazālī defines *ḥisbah* as a "complete expression" (*'ibārah shāmilah*) of the term "enjoining the good and forbidding the evil". Al-Ghazālī, *Iḥyā'*, p. 398.

<sup>98</sup>See for example the discussion on the qualifications of the *muḥtasib*. Al-Ghazālī, *Iḥyā'*, pp. 398-9. Ibn al-Ukhuwwah, *Ma'ālīm*, pp. 7-8. See also jurisdiction of *ḥisbah* over matters involving personal opinion (*ijtihād*). Al-Ghazālī, *Iḥyā'*, pp. 415-6. Ibn al-Ukhuwwah, *Ma'ālīm*, p. 197, and on stages of *ḥisbah*. Al-Ghazālī, *Iḥyā'*, p. 422. Ibn al-Ukhuwwah, *Ma'ālīm*, pp. 195-6.

<sup>99</sup>The manual was edited by E. Levi-Provencal and G. S. Colin. *Un Manuel Hispanique de Ḥisba*. Paris, 1931. It was then translated into Spanish by Pedro Chalmeta Gendron, "*El Kitāb fī Ādāb al-Ḥisba (Libro del Buen Gobierno del Zoco) de al-Saqāṭī*". *Al-Andalus*, (1967), pp. 125-162, 359-397, (1968), pp. 143-195.

<sup>100</sup>This is according to Cl. Cahen and M. Talbi. See "Ḥisba". *EI(2)*, vol. 3, pp. 485-489. F. Gabrieli also suggests that al-Saqāṭī was the contemporary of Ibn 'Abdūn, who is believed to live between 5th/11th and 6th/12th centuries. F. Gabrieli. Ibn 'Abdūn. *EI(2)*, vol. 3, p. 681. However, S.M. Imamuddin maintained that he lived in 14th century. For that matter he added that, although al-Saqāṭī lived and worked in the 14th century, yet the customs and practices of the *muḥtasib* and merchants reflect their earlier practices in the 10th and 11th centuries with a little deviation due to the scarcity of goods during the time of the author. S.M. Imamuddin, "*Al-Ḥisbah in Muslim Spain*". *IC*, p. 62.

artisans and vendors to ensure that their customers received goods of good quality and correct weight at reasonable prices. In short, the author gives information about the instructions given to the *muḥtasib* for strict vigilance such as periodical inspection of various articles, the *muḥtasib*'s seal, official measures and weights, the malpractices of different workshop owners, brokers, sellers of bread, horses and slaves, and finally the *muḥtasib*'s power to imprison.

vii) *Risālat Ibn ʿAbdūn fī al-Qaḍāʾ wa al-Ḥisbah* of Ibn ʿAbdūn (ca. 500/1100), the Andalusian scholar of Seville<sup>101</sup>. Ibn ʿAbdūn's full name is Muḥammad ibn Aḥmad. He was a *faqīh* and was either a *qāḍī* or a *muḥtasib*. He was born perhaps in Seville, and certainly spent a large part of his life there, in the second half of the 5th/11th and the first half of the 6th/12th centuries<sup>102</sup>. His work, *Risālah fī al-Qaḍāʾ wa al-Ḥisbah* speaks not only on matters concerning commercial and marketing but also the maintenance of law and order. Thus, we find the text mentioning that it is disapproved for someone to carry a weapon in town, especially the Berbers, for this may cause a disaster. Similarly, musicians are not allowed to roam about without the permission of the *qāḍī* because they are accompanied by

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<sup>101</sup>E. Levi-Provencal (ed.). *Journal Asiatique*. 1934; reprinted in, *Trois Traités Hispaniques de Ḥisba (Thālatha Rasā'il Andalusīyyah fī Ādāb al-Ḥisbah wa al-Muḥtasib)*. Le Caire: 1955. This treatise was translated into French by E. Levi-Provencal in, *Seville Musulmane du début du XII siècle*, 1947. It was also translated into Spanish in collaboration with Garcia Gomez in *Sevilla Musulmana*, 1948; and Italian by F. Gabrieli, in *Rend. Lin.*, 6th series, xi, 1935.

<sup>102</sup>"Ibn ʿAbdūn". *EI*(2). vol. 3, p. 681.

people of undesirable character<sup>103</sup>. The author maintains that *ḥisbah* or *iḥtisab* has a close relationship to *qaḍā'*, for the *muḥtasib* is regarded as a representative of the *qāḍī*, and he will act in the absence of the latter<sup>104</sup>.

viii) *Kitāb Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah* of al-Shayzarī (d. 589/1193)<sup>105</sup>, a Syrian author from Shayzar who was the contemporary of Ṣalāḥ al-Dīn al-Ayyūbī (d. 589/1193). This work was first discussed by Walter Behrnauer in 1860<sup>106</sup> and later in 1946, al-Bāz al-ʿArīnī provided an Arabic edition to the text<sup>107</sup>. This book contains 40 chapters, four of which deal with the supervision of *ḥisbah* in general, such as the discussions on markets, weights and measures and the duties of the *muḥtasib*. The rest of the book deals more specifically with the duties of the *muḥtasib* as regards different artisans and crafts with full details on the rules and regulations which should be followed in each craft in order to maintain a clean and safe product, and prevent cheating. This book of al-

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<sup>103</sup>S. M. Imamuddin, *IC*. pp. 25-26.

<sup>104</sup>Ibn ʿAbdūn, *Risālah*. p. 20. Ibn ʿAbdūn said: *wa al-Iḥtisāb akhū al-Qaḍā' wa huwa lisān al-Qāḍī wa ḥājibuhu wa wazīruhu wa khalīfatuhu*.

<sup>105</sup>Abd al-Raḥmān ibn Naṣr ibn ʿAbd Allāh al-Shayzarī. Apart from this work on *ḥisbah*, he produced another work entitled *Al-Nahj al-Maslūk fī Siyāsāt al-Mulūk*, which he presented to Sulṭān Ṣalāḥ al-Dīn al-Ayyūbī. Ḥājjī Khalīfah, *Kashf al-Zunūn*. 3: 510, 5: 507. Brockelmann, *GAL* (supp.) 1: 832. Al-Bāz al-ʿArīnī, "Introduction to *Nihāyah* of al-Shayzarī". p. vii.

<sup>106</sup>Behrnauer, "Memoire sur les Institutions de Police chez les Arabes, les Persans et les Turcs". *Journal Asiatique*. 5th series, 1860, xv, pp. 461-509, xvi, pp. 114-190.

<sup>107</sup>Al-Bāz al-ʿArīnī, *Kitāb Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah*. Maṭbaʿat al-Taʿlīf wa al-Tarjamah wa al-Nashr. Cairo, 1365/1946.



Shayzarī had since become the basis for many of the *ḥisbah* manuals, particularly in the cases of Ibn al-Ukhuwwah and Ibn Bassām<sup>108</sup>.

ix) *Al-Ḥisbah fī al-Islām* of Ibn Taymiyyah (d. 728/1328)<sup>109</sup>. Unlike earlier jurists, with the exception of the work of Yaḥyā ibn ʿUmar, Ibn Taymiyyah's discussion on *ḥisbah* is found in one book. However, his work mostly is, in fact, reiterating the discussions of previous jurists. Part of his discussion also shows some similarities to the work of his contemporary, Ibn al-Ukhuwwah (d. 729/1329), *Maʿālim al-Qurbah fī Aḥkām al-Ḥisbah*, particularly in matters concerning the discretionary punishments (*taʿzīr*). Nevertheless, credit should be given to him for his effort to reexamine some controversial issues like price fixing which was initiated by Yaḥyā ibn ʿUmar but was left out by al-Māwardī and al-Ghazālī. In fact, his discussion is more comprehensive because his reference is not limited to the opinions of his school of thought, i.e. Ḥanbalī, but also takes into account those of the Mālikīs and the Shafīʿīs<sup>110</sup>. However, the author still has difficulty

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<sup>108</sup> Al-Bāz al-ʿArīnī, "Introduction to *Nihāyah* of al-Shayzarī". p. v. See also Aidit Ghazali, *Islamic Thinkers on Economics Administration and Transactions*. Kuala Lumpur, 1991.

<sup>109</sup> Taqiyy al-Dīn Aḥmad ibn Taymiyyah was born in 661 A.H. and died in Damascus on 728 A.H. Even though he was a Ḥanbalī theologian and jurist, his influence is not confined to any one school of Islamic thought. Perhaps this is due to his respect for other scholars of different schools as shown in his work, particularly the treatise on *ḥisbah*. See Khurshid Ahmad, "Editor preface to *Public Duties in Islam: The Institution of the Ḥisbah*". p. 8.

<sup>110</sup> Ibn Taymiyyah, *al-Ḥisbah fī al-Islām*. ed. Sayyid ibn Muḥammad ibn Abī Saʿdah. Maktabat Dār al-Arqām. Kuwait. 1983.

in arranging the subjects of his discussions, though this seemed to have been settled by al-Māwardī and al-Ghazālī.

x) *Kitāb Maʿālim al-Qurbah fī Ahkām al-Ḥisbah*, by the Egyptian Ibn al-Ukhuwwah (d. 729/1329) in seventy chapters. Even though some great resemblances are found in his work to that of al-Shayzarī, the author has provided further information on the subject under discussion. Furthermore, Ibn al-Ukhuwwah has also made references to the works of al-Māwardī and al-Ghazālī. Thus, the work can be regarded as one of the best of its kind<sup>111</sup>.

xi) *Niṣāb al-Iḥtisāb* of ʿUmar ibn Muḥammad ibn ʿIwaḍ al-Sunāmī (d. about 734/1333-4)<sup>112</sup>. Al-Sunāmī lived and died in India. He was a Ḥanafī jurist and his work consists of sixty four chapters. Unlike other *ḥisbah* manuals, this work of al-Sunāmī was mainly concerned with moral and religious behaviour which is contradictory to the correct teaching of Islam, and only on some occasions did he mention the supervision of economic occupations. Thus, Izzidien holds that the work of al-Sunāmī provides rich information about popular practices in Indian Islam during

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<sup>111</sup>Ibn al-Ukhuwwah, *Kitāb Maʿālim al-Qurbah fī Ahkām al-Ḥisbah*, edited and abridged translation by Reuben Levy. Cambridge. 1937.

<sup>112</sup>The work has been studied by two Ph.D theses. See David Henry Partington. *The Niṣāb al-Iḥtisāb. An Arabic religio-legal text*. Unpublished Ph.D thesis, Princeton University. 1961. See also M.Y. Izzidien. *Niṣāb al-Iḥtisāb of ʿUmar ibn Muḥammad al-Sunāmī*. Unpublished Ph.D thesis. 2 vols. Manchester University. 1978. Volume 2 of this thesis contains an edition to *Niṣāb al-Iḥtisāb*.

the medieval period. Although the work discusses many social innovations, manners, customs and ceremonies, it cannot be considered merely as a work on social history, because the main intention of the book is to draw a clear distinction between what is lawful and what is unlawful according to Islam<sup>113</sup>. Thus, al-Sunāmī himself explains that he seeks to assist the *muḥtasibs* in the fulfilment of their duty so that his work becomes a guide for them<sup>114</sup>.

xii) *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah* of Ibn Bassām (7th/13th century), who was of Syrian or Egyptian origin. According to Partington, this work of Ibn Bassām remains unedited. The only study on the text was made by Loius Cheikho in 1907 and 1908, and consists of some extracts and an analysis of the work<sup>115</sup>. There seem to be two copies in manuscript of this work of Ibn Bassām. According to Reuben Levy, a copy of the MS was held at British Museum MS Or 9588<sup>116</sup>, while al-Bāz al-ʿArīnī maintained that another copy was found in the *Taymūr* collection in the

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<sup>113</sup>Izzidien. p. 22.

<sup>114</sup>Al-Sunāmī, p. 1.

<sup>115</sup>Partington, *The Niṣāb al-Iḥtisāb*. Unpublished Ph.D Thesis, Princeton University, 1961, p. 19. However, Pedro Chalmeta Gendron indicates that the work of Ibn Bassām was edited by Ḥusām al-Dīn Sammarāʾī which entitled; *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah li Ibn Bassām al-Muḥtasib*. Baghdad, 1968. See P.C. Gendron, *el "senor del zoco" en espana: edades media y moderna*. Madrid. 1973, p. 652.

<sup>116</sup>Reuben Levy, "Introduction to *Maʿālim al-Qurbah* of Ibn al-Ukhuwwah". p. xvii.

Bibliothèque Egyptienne in Cairo<sup>117</sup>. Ibn Bassām was believed to be a *muḥtasib*. Even though, he had copied some of the chapters from al-Shayzarī's *Nihāyah*, and had borrowed the title of the book, in fact, he had extended the discussions into one hundred and fourteen chapters, whereas al-Shayzarī included only forty chapters<sup>118</sup>.

xiii) *Risālat Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Raʿūf fī Adab al-Ḥisbah wa al-Muḥtasib* of Ibn ʿAbd al-Raʿūf<sup>119</sup>. Little is known about Ibn ʿAbd al-Raʿūf. However, he is believed to be an Andalusian<sup>120</sup>.

xiv) *Risālat ʿUmar ibn ʿUthmān ibn ʿAbbās al-Jarsīfī fī al-Ḥisbah* of al-Jarsīfī<sup>121</sup>. Levi-Provencal suggests that al-Jarsīfī's *nisba* derives from Guercif in Eastern Morocco, some 100 miles east north-east of Fez. His date is certainly not earlier than 1250-1300 A.D. to judge by his references to al-Nawāwī, the latest author he quotes<sup>122</sup>.

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<sup>117</sup> Al-Bāz al-ʿArīnī, "Introduction to al-Shayzarī's *Nihāyah*, p. vii.

<sup>118</sup> Partington, op.cit.

<sup>119</sup> E. Levi-Provencal (ed.). *Trois Traités Hispaniques de Ḥisba*. Le Caire: 1955. See also Rachel Arie, (trans. Fr.). *Hesperis-Tamuda*, i (1960).

<sup>120</sup> S. M. Imamuddin. *IC*. p. 25.

<sup>121</sup> E. Levi-Provencal. Ibid. This treatise was also translated into French by Rachel Arie in *Hesperis-Tamuda*, i (1960), while G. M. Wickens has translated it into English in *IQ*, 1956. See also commentaries drawn on by J. D. Latham in *JSS*, v (1960).

<sup>122</sup> G. M. Wickens, "Al-Jarsifi on the *Ḥisba*". *IQ*. vol. iii (1956), p. 176.

It should be noted here that there are other works of lesser importance which include *al-Faṣl fī al-Milal wa al-Ahwā' wa al-Niḥal* of Ibn Ḥazm (d. 456/1064). According to the author, the Muslim scholars were unanimous in making the duty of enjoining the good and forbidding evil obligatory on every Muslim. However, in carrying out the duty, the person responsible should be patient and recognise other people's rights. Therefore, it is unlawful for him to harm another person or confiscate his property except by law<sup>123</sup>.

Al-Juwaynī (d. 499/1105) in his book *al-Ghiyāthī* had also treated the subject in his chapter on enjoining the good and forbidding evil. According to al-Juwaynī, although the obligation of enjoining the good and forbidding evil falls on every Muslim, ordinary people are only allowed to carry out the duty by giving advice without being rude (*faṣāḥah*) or making flattering (*malaq*) remarks<sup>124</sup>.

Apart from these, there are other works of the jurists who have discussed the issues relating to *ḥisbah*, such as *Kitāb al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar'īyyah* by Ibn Qayyim al-Jawziyyah (d. 751 A.H.) and *Kitāb Tabṣirat al-Ḥukkām* by Ibn Farḥūn (d. 799 A.H.).

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<sup>123</sup>It should be mentioned here that neither the word *ḥisbah* nor *iḥtisāb* is found in the text. Instead, the author has used the term *al-amr bi al-ma'rūf wa al-nahy 'an al-munkar*. Ibn Ḥazm, *al-Faṣl*, vol. 4, pp. 171-6.

<sup>124</sup>Al-Juwaynī, *al-Ghiyāthī*, pp. 237-239.



Ibn Khaldūn (d. 808/1406)<sup>125</sup> also deals with the subject of *ḥisbah* in his *al-Muqaddimah*. He considers *ḥisbah* as one of the major institutions of the Islamic caliphate that fall under the religious obligation "to enjoin the good and forbid evil". According to Ibn Khaldūn, *ḥisbah* was under the jurisdiction of the *qāḍī*. However, later, it became part of the office of the Caliph<sup>126</sup>.

Al-Qalqashandī (d. 821/1418)<sup>127</sup> also deals with the subject in *Ṣubḥ al-Aʿshā*, particularly in volume 12, where he lists several of the letters of appointment (*tawqīʿāt*) that were sent to the designated *muḥtasibs*. These letters give an idea about the qualifications of the *muḥtasib* and the importance of the office in comparison with other governmental institutions. *Ḥisbah* was considered a religious office and was placed next to *qaḍāʾ*<sup>128</sup>.

#### 4. Studies on works of *ḥisbah* by later scholars

The earliest study on *ḥisbah* was made by Walter Behrnauer in 1860, who examined al-Shayzarī's *Kitāb Nihāyat al-Rutbah fī Aḥkām al-Ḥisbah*.

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<sup>125</sup>Walī al-Dīn Abū Zayd ʿAbd al-Raḥmān. *First EI*. vol. 3, p. 395-6.

<sup>126</sup>Ibn Khaldūn. *The Muqaddimah*. ed. and trans. by F. Rosental N.J. 1962.

<sup>127</sup>Shihāb al-Dīn Abū al-ʿAbbās ibn ʿAlī ʿAbd Allāh ibn Aḥmad ibn ʿAbd Allāh al-Fazārī al-Shāfiʿī (756-821/1355-1418). *EI(2)*. vol. 4, pp. 509-511.

<sup>128</sup>Al-Qalqashandī. *Ṣubḥ al-Aʿshā*. Cairo. 1964.

Despite the fact that the study has mistakenly referred to al-Shayzarī as al-Nibrawī, it has been recognised as one of the most significant studies on the subject.

Later, in 1907 and 1908, Louis Cheikho produced his monumental study on the work of Ibn Bassām. A series of studies were made by Muḥammad Kurd ʿAlī in 1908 and 1921 which discussed a general outline of the institution of *ḥisbah*. In 1916, H.F. Amedroz presented his translation and analysis of chapter twenty of al-Māwardī's *al-Aḥkām al-Sulṭāniyyah wa al-Wilāyat al-Dīniyyah*. This was followed by a study by G.S. Colin and E. Levi-Provencal who edited the work of al-Saqāṭī in 1931. Later in 1934, 1947 and 1955, E. Levi-Provencal produced a series of studies on and editions of the works of Andalusian scholars, comprising of Ibn ʿAbdūn, Ibn ʿAbd al-Raʿūf and al-Jarsīfī. The author also translated the work of Ibn ʿAbdūn in 1947. In 1938, Reuben Levy presented his monumental study in which he edited and summarized the work of Ibn al-Ukhuwwah. Later, in 1946, al-Bāz al-ʿArīnī provided an Arabic edition of the work of al-Shayzarī. In 1948, E. Garcia Gomez reintroduced the work of Ibn ʿAbdūn which was translated into French by E. Levi-Provencal in 1947. Later in 1953, R.B. Serjeant introduced the work of a Zaydī scholar al-Nāṣir li al-Ḥaqq. In 1956, Maḥmūd ʿAlī Makkī introduced the work of Yaḥyā ibn ʿUmar and a year later E. Garcia Gomez provided a Spanish translation of the work. In the same year, G.M. Wickens translated the work of al-Jarsīfī. Later, in

1975, Farḥāt al-Dashrāwī with the help of Ḥasan Ḥuṣnī °Abd al-Wahhāb edited another version of the work of Yaḥyā ibn °Umar.

Perhaps one of the best known contemporary scholars describing *ḥisbah* is Nicola Ziadeh in his two books "*Al-Ḥisbah wa al-Muḥtasib fī al-Islām*"<sup>129</sup> and "*Urban Life in Syria under the Early Mamluks*"<sup>130</sup>, in which he discusses the office of *ḥisbah* and the duties of the *muḥtasib*. Benjamin Foster discusses the relationship between the Roman *agoranomos* and the *muḥtasib*, in which he concludes that *agoronomia* and *ḥisbah* were words applied at different times to an office that dealt with many similar functions but with widely different bases of authority and roles in different administrative systems, even within the same civilization<sup>131</sup>.

Apart from him, a study was carried out by Thomas Glick. The author discusses the question of continuity of market inspection, particularly from Islam to later Christian Spain and the Latin East<sup>132</sup>. There are other studies carried out by scholars such as by S.M.

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<sup>129</sup>Nicola Ziadeh, *Al-Ḥisbah wa al-Muḥtasib fī al-Islām*. Beirut. 1962. The book also contains several selections of *ḥisbah* materials from primary sources.

<sup>130</sup>Nicola Ziadeh, *Urban Life in Syria under the Early Mamluks*. Beirut. The American University, 1963.

<sup>131</sup>Benjamin Foster, "Agoranomos and Muḥtasib". *JESHO*, 1970. pp. 120-144.

<sup>132</sup>Thomas Glick, "Muḥtasib and Mustasaf". *VIATOR*. vol. 2, 1971. pp. 59-81.



Imamuddin<sup>133</sup>, Ishaq Musa al-Husaini<sup>134</sup>, Zāfir al-Qāsimī<sup>135</sup> and R.P. Buckley who traced the role of market supervision during early Islam<sup>136</sup>. Much information on the literature and history of *ḥisbah* can be derived from a study by Claude Cahen and Muhammad Talbi in the *Encyclopaedia of Islam*<sup>137</sup>.

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<sup>133</sup>S.M. Imamuddin. "Al-*Ḥisbah* in Muslim Spain". *IC*. 1963. pp. 25-29.

<sup>134</sup>Ishaq Musa al-Husaini. "*Ḥisba* in Islam". *IQ*. 1966. pp. 69-83.

<sup>135</sup>Zāfir al-Qāsimī, *Nizām al-Ḥukm fī al-Sharī'ah wa al-Tārīkh al-Islāmī*. vol 2. Beirut, 1983.

<sup>136</sup>R.P. Buckley, "The *Muḥtasib*", *ARABICA*. 1992, pp. 59-65.

<sup>137</sup>Cl. Cahen and M. Talbi, "*Ḥisba*" *EI*(2). vol 3, pp. 485-493. See also Reuben Levy, "The *Muḥtasib*". *EI*(1). vol 3. pp. 702-3.

## CHAPTER ONE

### An analysis of the work of the Mālikī scholar Yaḥyā ibn ʿUmar al-Kinānī al-Andalusī

#### 1.1. Sources

The name Yaḥyā ibn ʿUmar was mentioned by Claude Cahen and Muhammad Talbi in the *Encyclopaedia of Islam*<sup>1</sup> together with his work entitled *Kitāb Aḥkām al-Sūq* (Book on legal decisions related to the market). In fact, the work was first edited by Maḥmūd ʿAlī Makkī in *Revista del Instituto Egipcio de Estudios Islamicos* (*Ṣaḥīfat al-Maʿhad al-Miṣrī*), in 1956<sup>2</sup> and later on was translated into Spanish by Emilio Garcia Gomez, in *al-Andalus* in 1957<sup>3</sup>. The work was transmitted by Ibn Shibl al-Andalusī<sup>4</sup>. There is in fact another version of the work which was transmitted by Aḥmad al-Quṣarī al-Qayrawānī<sup>5</sup> which is entitled *Kitāb al-Nazar wa al-Aḥkām fī Jamīʿ Ahwāl al-Sūq* (Book on supervision and legal

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<sup>1</sup>Cl. Cahen and M. Talbi. "*Ḥisba*". *EI*(2) vol. 3, p. 486.

<sup>2</sup>M.A. Makkī. *RIEEI*, iv, 1956. pp. 59-151.

<sup>3</sup>E. Garcia Gomez. *al-Andalus*, xxii, 1957. pp. 253-316.

<sup>4</sup>See Ibn Farḥūn, *al-Dībāj*. p. 319.

<sup>5</sup>See al-Khushanī. *Quḍāt*. p. 184.

decisions on matters related to the market). This work was edited by Farḥāt al-Dashrāwī, Tunisia, 1975 with the help of Ḥasan Ḥusnī °Abd al-Wahhāb who owns the manuscript. These two versions of the work of Yaḥyā ibn °Umar will then be referred to as the first and the second version throughout the study. It is the intention of this study to analyse and summarise the two versions of the texts.

## 1.2. Life and career of Yaḥyā ibn °Umar

His name is Abū Zakariyyā<sup>6</sup> Yaḥyā ibn °Umar ibn Yūsuf al-Kinānī al-Andalusī. He was born in *Jayyān*<sup>6</sup> in Andalusia<sup>7</sup>. There are two different accounts of when Yaḥyā was born. As mentioned in *Shajarat al-Nūr al-Zakiyyah fī Ṭabaqāt al-Mālikiyyah*, Yaḥyā was born in 223 A.H. and died in 298 A.H. This, in fact, is not correct and cannot be accepted because the book also mentioned that al-Dimyāṭī<sup>8</sup> the Mālikī scholar in Egypt, who died in 226 A.H. was one of his teachers<sup>9</sup>. The same account was given by Ibn Farḥūn that Yaḥyā ibn °Umar is also said to have studied in Egypt

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<sup>6</sup>*Jayyān* or Jaen as known at present is a city in Andalusia. See *Mu°jam fī al-A°lām*. p. 179.

<sup>7</sup>Ibn Farḥūn, *Al-Dibāj*. p. 351.

<sup>8</sup>Abū Zayd °Abd al-Raḥmān ibn Abū Ja°far al-Dimyāṭī (d. 226 A.H.). He narrated from Mālik and later continued to study with Ibn Wahb, Ibn al-Qāsim and Ashhab. Here, Ibn Farḥūn had stated that Yaḥyā ibn °Umar and al-Wālid ibn Mu°āwiyah had studied with him in Egypt. Ibn Farḥūn, *al-Dibāj*. p. 148. Makhlūf, *Ṭabaqāt*. p. 59.

<sup>9</sup>In fact, the book also stated that he had studied with Aṣḥab ibn al-Faraj who died in 225 A.H. Makhlūf, *Ṭabaqāt*. p. 73.

with al-Dimyāṭī and bearing in mind that Yaḥyā ibn ʿUmar had studied before this from ʿAbd al-Malik ibn Ḥabīb<sup>10</sup> in Cordova and from Saḥnūn ibn Saʿīd<sup>11</sup> in Qayrawān<sup>12</sup>. The more acceptable account on this matter could be derived from those of Ibn al-Faraḍī<sup>13</sup> and Ibn Farḥūn<sup>14</sup>.

<sup>10</sup>Abū Marwān ʿAbd al-Malik ibn Ḥabīb (174-238 A.H.). He studied with Ibn al-Māʾishūn, Aṣḥab ibn al-Faraj and others. He took over the leadership of the Mālikī school in al-Andalus from Yaḥyā al-Laythī when the latter died. Ibn Farḥūn regards him as the most learned man of his time. The same was the opinion of Ibn al-Māʾishūn and he even considered Ibn Ḥabīb as more competent than Saḥnūn ibn Saʿīd. According to Ibn Farḥūn, whenever he went out from the mosque, there were about 300 students waiting for him. Ibn Farḥūn, *al-Dībāj*. pp. 154-6. Ibn al-Faraḍī, *Tārīkh*. pp. 312-5. Makhlūf, *Ṭabaqāt*. See also, Ibn al-Farḥūn, *al-Dībāj*. p. 351.

<sup>11</sup>ʿAbd al-Salām Saḥnūn or "Suḥnūn" ibn Saʿīd al-Tanūkhī (160-240 A.H.), the famous *qāḍī* and jurist of the Mālikī school of law. He started his *riḥlah* at the age of 18 in the year 178 A.H. He studied with Ibn al-Qāsim when he was 25 years old. He also studied with Ashhab and Ibn Abī al-Ghamar. All his teachers spoke very highly of him and considered him as their best student who came from the West. However, Ibn Abī al-Ghamar prefers Ibn Ḥabīb because of his eloquence. He returned to Qayrawān in 191 A.H. at the age of 31. After much persuasion from the *amīr* Muḥammad ibn al-Aghlab, he agreed to become a *qāḍī* in Qayrawān in 234 A.H. at the age of 74, on condition that he would not be receive any salary and that he would execute justice even though it would involve the *amīr* and his family. He continued in his position until he died in 240 A.H. According to Muḥammad Makhlūf, Saḥnūn had carried out the duty of *ḥisbah* along with his official occupation as a *qāḍī*. He wrote *al-Mudawwanah* which he narrated from Ibn al-Qāsim. Amongst his most senior students and associates were his son, Muḥammad ibn Saḥnūn, Muḥammad ibn ʿAbdūs, Ḥamdīs, ʿIsā ibn Miskīn and Yaḥyā ibn ʿUmar. Ibn Farḥūn, *al-Dībāj*. pp. 160-6. Makhlūf, *Ṭabaqāt*. pp. 69-70. Ḥasan Ḥusnī ʿAbd al-Wahhāb, *al-Imām al-Māzarī*. p. 24.

<sup>12</sup>Al-Khushanī, *Quḍāt*. p. 184. Ibn al-Faraḍī, *Tārīkh*. vol. 2, p. 181. Ibn Farḥūn, *al-Dībāj*. p. 351.

<sup>13</sup>*Al-qāḍī* Abū al-Walīd ʿAbd Allāh ibn Muḥammad known as Ibn al-Faraḍī (d. 403 A.H.). A famous jurist and historian. He had studied with al-Khushānī (d. 361 A. H.) in Cordova and with Ibn Abī Zayd al-Qayrawānī (d. 386 A.H.) in Qayrawān. He then travelled to the East. He wrote a famous book entitled *Tārīkh al-ʿUlamāʾ wa al-Ruwāt li al-ʿIlm bi al-Andalus*, which is referred to in this study. Ibn Farḥūn, *al-Dībāj*. p. 143. Makhlūf, *Ṭabaqāt*. pp. 102-3. See Ibn al-Faraḍī, *Tārīkh*. vol. 2, p. 181.

<sup>14</sup>Burhān al-Dīn Abū Ishāq Ibrāhīm ibn al-Shaykh Abī al-Ḥasan ʿAlī ibn Farḥūn (d. 799 A.H.). He was a great Mālikī jurist and was a *qāḍī* in Medina. He was also the author of many famous books such as, *Tabṣīrat al-Ḥukkām fī Uṣūl al-Aqḍiyah* and *Al-Dībāj al-Mudhḥhab fī Maʿrifah Aʿyān ʿUlamāʾ al-Madhḥab*. Makhlūf, *Ṭabaqāt*. p. 222. See Ibn Farḥūn, *al-Dībāj*. pp. 351-3.

According to them, Yaḥyā ibn ʿUmar who died in 289 A.H. at the age of 76<sup>15</sup>. However, with regard to his *riḥlah*, it could be assumed that Yaḥyā ibn ʿUmar was born earlier than 213 A.H. because when his teacher Saḥnūn died in 240 A.H., Yaḥyā ibn ʿUmar would not have been more than 27 years old. Furthermore, Yaḥyā ibn ʿUmar is said to have studied with his teacher Saḥnūn and was regarded as one of his most senior students and associates. Moreover, as mentioned earlier, Ibn Farḥūn and Ibn al-Faraḡī have indicated that Yaḥyā ibn ʿUmar had begun his *riḥlah* to the East earlier than 226 A.H. when he was not more than thirteen years old. He then returned to Qayrawān before Saḥnūn died in 240 A.H. which concluded the duration of his *riḥlah* to Egypt, Ḥijāz and Qayrawān for about fourteen years. Thus, it could be accepted that Yaḥyā ibn ʿUmar was born earlier than 213 A.H. However, there seems to be no proof for that.

As illustrated by figures 1.1. (the relationship between the Mālikī scholars and their teachers)<sup>16</sup> and 1.3. (the *riḥlah* of Yaḥyā ibn ʿUmar)<sup>17</sup> which were drawn from the available sources, Yaḥyā ibn ʿUmar was believed to have grown up in Cordova and began studying with the most celebrated Mālikī scholar of his time, ʿAbd al-Malik ibn Ḥabīb. Yaḥyā ibn

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<sup>15</sup>Ibn Farḥūn however, clearly stated that the author was born in Andalusia in 213 A.H. Ibn Farḥūn, *al-Dībāj*. Ibid. Ibn al-Faraḡī. op.cit.

<sup>16</sup>See Appendix A.

<sup>17</sup>See Appendix C. See also Appendix D: Figure 1.4. (The Presumed Age of Yaḥyā ibn ʿUmar). These accounts were, in fact, an assumption made by the present study based on the facts derived from figures 1.1 and 1.3.

ʿUmar then travelled to *Ifriqiyyah* (North Africa) and studied with Saḥnūn ibn Saʿīd in Qayrawān. It is believed that Yaḥyā ibn ʿUmar stayed in Qayrawān for a short period of time because he then continued his *riḥlah* to the East with his brother Muḥammad. The same thing occurred in the case of Muḥammad ibn ʿAbdūs<sup>18</sup> who studied with Saḥnūn ibn Saʿīd when young, then travelled to the East to study with various Mālikī scholars, but later returned to Qayrawān to continue his study with Saḥnūn and later was regarded as one of his most senior students and associates<sup>19</sup>. In the case of Yaḥyā ibn ʿUmar, he was also regarded as one of the most senior students and associates of Saḥnūn ibn Saʿīd.

It is believed that Yaḥyā ibn ʿUmar had travelled to Egypt before 226 A.H. when he was not more than thirteen years old<sup>20</sup> because, amongst his teachers in Egypt, was al-Dimyāṭī who died in 226 A.H. The fact that Yaḥyā has only referred to al-Dimyāṭī through al-Walīd ibn Muʿāwiyah<sup>21</sup> could be because he was too young at that time<sup>22</sup>. This does not mean that

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<sup>18</sup>Muḥammad ibn Ibrāhīm ibn ʿAbdūs known as Ibn ʿAbdūs (202-260/718-874). One of the great scholars of Qayrawān. Al-Khushānī, *Quḍāt*. pp. 182-3. Ibn Farḥūn, *al-Dībāj*. pp. 237-8. Makhlūf, *Ṭabaqāt*. p. 70. Al-Ziriklī, *al-Aʿlām*. 5:294.

<sup>19</sup>Al-Khushānī. loc.cit.

<sup>20</sup>See Appendix D, figure 1.4. (The Presumed Age of Yaḥyā ibn ʿUmar).

<sup>21</sup>The study has not been able to locate him. However, Ibn Farḥūn had indicated that he was one of the students of al-Dimyāṭī who died in 226 A.H. in Egypt. Therefore, it could be assumed that he was in Egypt during that year. See Ibn Farḥūn, *al-Dībāj*. p. 148.

<sup>22</sup>*The text (second)*. p. 111.



he did not meet al-Dimyāṭī, since on another occasion he has referred to Ibn Abī al-Ghamar<sup>23</sup> who died in 234 A.H. through his nephew Aḥmad<sup>24</sup>. According to one source, Yaḥyā ibn ʿUmar is said to have studied with Aṣḥab ibn al-Faraj<sup>25</sup> who died in 225 A.H. However, the book itself held that he was born in 223 A.H.<sup>26</sup>. Furthermore, from the two texts, Yaḥyā ibn ʿUmar had only referred to Aṣḥab ibn al-Faraj through ʿUbayd ibn Muʿāwiyah<sup>27</sup>. In fact, Yaḥya is said to have written a treatise on the teaching of Aṣḥab in al-Faraj which he had narrated from Ibn al-Qāsim. The treatise then was transmitted to Yaḥyā ibn ʿUmar by ʿUbayd ibn Muʿāwiyah. Therefore, it could be assumed that Yaḥyā did not study with Aṣḥab ibn al-Faraj, but might have come to Egypt during the year the latter died. In Egypt, Yaḥyā ibn ʿUmar also studied with Ibn

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<sup>23</sup>Abū Zayd ʿAbd al-Raḥmān ibn ʿUmar ibn Abī al-Ghamar (160-234 A.H.). He met Mālik but did not narrate from him. He studied with Ibn al-Qāsim, Ibn Wahb and others. He was one of the great scholars of the Mālikīs in Egypt. Al-Bukhārī narrated from him and included traditions from him in his *Ṣaḥīḥ*. Ibn Farḥūn has stated that one of his students was Yaḥyā ibn ʿUmar. Ibn Farḥūn, *al-Dībāj*. pp. 148-9. Makhlūf, *Ṭabaqāt*. pp. 66-7.

<sup>24</sup>See *The text (second)*. p. 94.

<sup>25</sup>Aṣḥab ibn al-Faraj ibn Saʿīd ibn Nāfiʿ (150 - 225 A.H.). One of the great Mālikī scholars in Egypt. At the age of 29, he had made his *riḥlah* to study with Mālik, but the latter died when he arrived in Ḥijāz. He then studied with Ibn al-Qāsim, Ibn Wahb and Ashhab. Later he became the secretary to Ibn Wahb. Ibn Farḥūn, *al-Dībāj*. p. 97. Makhlūf, *Ṭabaqāt*. p. 67. Al-Ziriklī, *al-Aʿlām*. 1:333.

<sup>26</sup>Makhlūf, *Ṭabaqāt*. p. 73.

<sup>27</sup>The two texts referred to him as ʿAbd Allāh ibn Muʿāwiyah and ʿUbayd Allāh ibn Muʿāwiyah. However, it seems more likely that he was ʿUbayd ibn Muʿāwiyah. There seems to be no evidence showing that Yaḥyā ibn ʿUmar had had any relation with either ʿAbd Allāh or ʿUbayd Allāh. However, according to *qāḍī* ʿIyāḍ, ʿUbayd ibn Muʿāwiyah was one of Yaḥyā's teachers. Also, from ʿUbayd's biography, we learn that he was the student of Aṣḥab ibn al-Faraj. ʿUbayd ibn Muʿāwiyah died in 250 A.H. and his full name is ʿUbayd ibn Muʿāwiyah ibn Ḥakam al-Jafnāwī. *Qāḍī* ʿIyāḍ, *Tartīb al-Madārik*. vol. 3, pp. 86 and 234.

Bukayr<sup>28</sup> and the students of Ibn al-Qāsim<sup>29</sup> Ibn Wahb<sup>30</sup> and Ashhab<sup>31</sup>. Amongst them were Abū al-Ṭāhir ibn al-Saraḥ<sup>32</sup> and al-Ḥārith ibn Miskīn<sup>33</sup>. It should be noted here that from the text of the second version, Yaḥya had referred to his teacher al-Ḥārith ibn Miskīn fourteen times, which, in fact, was the most frequent type of *isnād* found in the text<sup>34</sup>. Although he was considered as an associate to his teacher Saḥnūn ibn Saʿīd, which could be due to the fact that both of them were teaching in Qayrawān, Yaḥyā seems to have attached himself to his teacher

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<sup>28</sup>Abū Zakariyyā Yaḥyā ibn ʿAbd Allāh ibn Bukayr al-Miṣrī (d. 231 A.H.). He had narrated from Mālik ibn Anas and studied with him his *Muwattaʿ*. Ibn Farḥūn, *al-Dībāj*, p. 353. He must not be mistaken with another Ibn Bukayr, Yaḥyā ibn Yaḥyā al-Naysabūrī who died in 226 A.H. because none of his students came from the East. See Ibn Farḥūn, *al-Dībāj*, pp. 349-350.

<sup>29</sup>Abū ʿAbd Allāh ʿAbd al-Raḥmān ibn al-Qāsim al-Miṣrī (d. 191 A.H.). One of the most senior students of Mālik who had studied with him for twenty years. Amongst his students were Aṣḥab, al-Ḥārith ibn Miskīn, Yaḥyā ibn Yaḥyā, Asad ibn Furāt, Saḥnūn and others. Makhlūf, *Ṭabaqāt*, p. 58.

<sup>30</sup>Abū Muḥammad ʿAbd Allāh ibn Wahb ibn Muslim al-Qurashī (d. 197 A.H.). One of the most senior students of Mālik who was with him for twenty years. His students are almost the same as those of Ibn al-Qāsim. Makhlūf, *Ṭabaqāt*, pp. 58-9.

<sup>31</sup>Abū al-ʿUmar Ashhab ibn ʿAbd al-ʿAzīz al-Miṣrī (145-204/762-819). One of the most senior students of Mālik. He took over the leadership of the Mālikī school in Egypt from Ibn al-Qāsim when the latter died in 191 A.H. He was a prominent jurist of the Mālikī school of law in Egypt. Al-Shāfiʿi regards him as the most learned scholar in Egypt at his time. His students were almost the same as those of Ibn al-Qāsim and Ibn Wahb. Makhlūf, *Ṭabaqāt*, p. 59. Al-Ziriklī, *al-Aʿlām*, 1:333.

<sup>32</sup>Aḥmad ibn ʿUmar ibn ʿAbd Allāh ibn al-Saraḥ (d. 250 A.H.). He was known as Abū al-Ṭāhir. He narrated from Ibn Wahb and studied with Ibn ʿUyaynah. He was one of the great scholars of the Mālikīs in Egypt. Ibn Farḥūn, *al-Dībāj*, pp. 35-6. Yaḥyā also mentioned that Abū al-Ṭāhir was one of his teachers. See *The text (second)*, p. 42.

<sup>33</sup>Abū ʿAmr al-Ḥārith ibn Miskīn ibn Muḥammad ibn Yūsuf (154-250/771-864). He studied with Ibn al-Qāsim, Ibn Wahb and Ashhab. He was a great Mālikī jurist in Egypt. He became a *qāḍī* in 237 A.H. Ibn Farḥūn, *al-Dībāj*, pp. 106-7. Makhlūf, *Ṭabaqāt*, p. 67. See also Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 2:156. Al-Ziriklī, *al-Aʿlām*, 2:157.

<sup>34</sup>See Appendix B.



al-Ḥārith ibn Miskīn rather than Saḥnūn ibn Saʿīd. Thus, from his work, Yaḥyā ibn ʿUmar had referred to the teachings of Mālik, Ibn al-Qāsim and Ibn Wahb through al-Ḥārith ibn Miskīn and some others, but not from Saḥnūn ibn Saʿīd. He only referred to Saḥnūn in relation to a tradition concerning price-fixing, which he had also narrated from al-Ḥārith ibn Miskīn and Abū al-Ṭāhir<sup>35</sup>. On other occasions, he and sometimes the transmitters gave the opinions of Saḥnūn without relating them to Mālik or any other scholars. Therefore, it could be concluded that Yaḥyā had spend most of his period of study in Egypt in the company of his teacher al-Ḥārith ibn Miskīn. This is illustrated in Appendixes.

He then travelled to Ḥijāz to study with Abū Muṣʿab al-Zuhrī<sup>36</sup> and others. He may have been here for a short period because he only referred to the opinions of the Medinans on one occasion<sup>37</sup>. On his return, Yaḥyā ibn ʿUmar stayed at Qayrawān to continue his study with Saḥnūn ibn Saʿīd but later remained there. It is believed that Yaḥyā had also studied with

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<sup>35</sup>See *The text (second)*. p. 42.

<sup>36</sup>Abū Muṣʿab Aḥmad ibn al-Qāsim ibn al-Ḥārith al-Zuhrī (d. 242 A.H.). He was a *qāḍī* in Madīnah in Ḥijāz. He narrated from Mālik and studied with Ibn Dīnār and others. Al-Bukhārī and Muslim narrated from him. Ibn Farḥūn, *al-Dībāj*. p. 30. Makhlūf, *Ṭabaqāt*. p. 57. See also Ibn al-ʿImād, *Shajarāt al-Dhahab fī Akhbār man Dhahab*. vol. 2, pp. 99-100.

<sup>37</sup>See the discussion on chapter three (price-fixing) in the summary below. *The text (second)*. p. 44.

*qāḍī* Yūsuf ibn Yaḥyā<sup>38</sup>. Although Yaḥyā had studied with Ibn Ḥabīb in Cordova when he was young, it seems obvious from the text of the second version that he had acquired most of the teaching of Ibn Ḥabīb through *qāḍī* Yūsuf ibn Yaḥyā<sup>39</sup>. Soon after that, Yaḥyā ibn ʿUmar began to conduct public teaching in the Great Mosque of Qayrawān. He should have started teaching before 250 A.H., because Abū Bakr ibn al-Shibl who came from al-Andalus studied with him that year<sup>40</sup>.

During the time of Yaḥyā ibn ʿUmar, Qayrawān was under the control of the dynasty of the Aghlabids who ruled *Ifriqiyyah* (North Africa), Algeria and Sicily from 184-296/800-909. It is believed that the ruler of the Aghlabids at that time was Ibrāhīm ibn Aḥmad II (261-289/875-902)<sup>41</sup> because the *amīr* was the person responsible for removing the Mālikīs jurists from the public offices and replacing them with the Ḥanafīs. He had terminated Ibn Ṭālib<sup>42</sup> from his *qāḍī*'s position and replaced him with Ibn ʿAbdūn. The former *qāḍī* Ibn Ṭālib then was sentenced to imprisonment and

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<sup>38</sup> Abū ʿUmar Yūsuf ibn Yaḥyā ibn Muḥammad al-Azdī (d. 288 A.H.). He had studied with Yaḥyā al-Laythī and Ibn Ḥabīb in Cordova. He then travelled to North Africa and later remained in Qayrawān. He died in Qayrawān in 288 A.H. Ibn al-Faraḡī, *Tārīkh*. vol. 2, p. 64. Ibn Farḥūn, *al-Dībāj*. p. 356.

<sup>39</sup> *The text (second)*. pp. 106 and 109.

<sup>40</sup> Ibn al-Faraḡī, *Tārīkh*. vol. 2, pp. 67-8.

<sup>41</sup> Al-Khushanī, *Quḍāt*. p. 297. See Bosworth, *The Islamic Dynasties*. pp. 24-5.

<sup>42</sup> Abū al-ʿAbbās ʿAbd Allāh ibn Ṭālib al-Tamīmī (d. 275 A.H.). He was an associate of Yaḥyā ibn ʿUmar and was appointed as a *qāḍī* of *Ifriqiyyah* twice (from 257-259 A.H. and from 267-275 A.H.). After he had been removed from the office, he was sent to prison and later died in the same year. Al-Khushanī, *Quḍāt*. pp. 186-8. Al-Ziriklī, *al-Aʿlām*. 4:93.

later died in prison in 275 A.H. Yaḥyā ibn ʿUmar was a close friend of *qāḍī* Ibn Ṭālib. In fact, the work of Yaḥyā ibn ʿUmar cited several legal decisions made by the *qāḍī* and it is clearly indicated that Yaḥyā had agreed to all of his statements. Thus, probably Yaḥyā ibn ʿUmar had fear that he might be receiving the same treatment as his friend and he in fact had already suffered some adversities which were coming from *qāḍī* Ibn ʿAbdūn<sup>43</sup>, so that he had to flee to his brother Muḥammad in Tūnis. However, *qāḍī* Ibn ʿAbdūn was informed of Yaḥyā's presence in Tūnis, so he went into hiding in a *ribāṭ* in Sūsah (Sousse). The *amīr*, Ibrāhīm ibn Aḥmad II then had changed his mind in giving favour to the Ḥanafīs, so he had removed Ibn ʿAbdūn from office<sup>44</sup>. It is believed that soon after that Yaḥyā ibn ʿUmar started his teaching at the Great Mosque in Sūsah.

From the source, it is mentioned that there were two most distinguished jurists who conducted their teaching at the two Great Mosques. They were, *qāḍī* Ibn Ṭālib who was in Qayrawān and Yaḥyā ibn ʿUmar in Sūsah<sup>45</sup>. It seems probable that this work of Yaḥyā ibn ʿUmar was based on his teaching at the Great Mosque of Sūsah. Thus, it is mentioned in the texts that Yaḥyā ibn ʿUmar had received a written

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<sup>43</sup>Al-Khushānī, *Quḍāt*. p. 297. See also the conflict between *aṣḥāb al-ra'y* and *aṣḥāb al-ḥadīth*. Isabel Fierro. "The introduction of *ḥadīth* in al-Andalus". *Der Islam*. 1989 pp. 81-3.

<sup>44</sup>Al-Khushānī, *Quḍāt*. pp. 184-6.

<sup>45</sup>Ibn Farḥūn, *al-Dībāj*. pp. 351-3.

petition from the market supervisor (*ṣāhib al-sūq*) of Qayrawān. Instead, he was asked in person by the market supervisor of Sūsah. It should be noted here that during this period, people had made their *riḥlah* from al-Andalus, Qayrawān and the surrounding districts to study with Yaḥyā ibn ʿUmar. Amongst his students were his brother, Muḥammad ibn ʿUmar<sup>46</sup>, the transmitters of the two texts<sup>47</sup>, Abū Bakr ibn al-Libād<sup>48</sup>, Abū al-ʿArab<sup>49</sup> and Aḥmad ibn Khālīd al-Andalusī<sup>50</sup>.

### 1.3. The transmitters

As previously mentioned, there are two versions of the work of Yaḥyā ibn ʿUmar. The first version was transmitted by Ibn Shibl and the second by Aḥmad al-Quṣarī. With regard to Ibn Shibl, M.A. Makkī held that the only available source on him was a brief account by Ibn Farḥūn. According to this source, the transmitter's full name is Abū ʿAbd Allāh Muḥammad

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<sup>46</sup>Muḥammad ibn ʿUmar (214 - 310 A.H.). His teachers were almost the same as his brother Yaḥyā ibn ʿUmar. He was in Tūnis when his brother went into hiding from *qāḍī* Ibn ʿAbdūn. However, after the death of his brother he had travelled to Egypt and later died there in 310 A.H. Ibn al-Faraḍī, *Tārīkh*. vol. 2, p. 37.

<sup>47</sup>See the discussion below.

<sup>48</sup>Abū Bakr Muḥammad ibn Muḥammad ibn al-Libād al-Qayrawānī (d. 333 A.H.). He studied with Yaḥyā ibn ʿUmar and his students were al-Khushānī and Ibn Abī Zayd al-Qayrawānī. Ibn Farḥūn, *al-Dībāj*. pp. 249-150. Makhlūf, *Ṭabaqāt*. p. 84.

<sup>49</sup>Abū al-ʿArab Muḥammad ibn Aḥmad al-Tamīmī (250-333 A.H.). One of the great Mālikī scholars who is said to have written about 3500 books. He died in Qayrawān. Ibn Farḥūn, *al-Dībāj*. pp. 250-1. Makhlūf, *Ṭabaqāt*. pp. 83-4.

<sup>50</sup>Abū ʿUmar Aḥmad ibn Khālīd (d. 322 A.H.). Al-Khushānī frequently refers to him throughout his book *Quḍāt Qurṭubah*. See Makhlūf, *Ṭabaqāt*. p. 87.

ibn Salīm ibn Shibl al-Ifriqī. He is said to have studied with Saḥnūn ibn Saʿīd and Muḥammad ibn Rumḥ<sup>51</sup>. He died in 307 A.H.<sup>52</sup>. However, there was another person who was known as Ibn al-Shibl and his full name is Abū Bakr Muḥammad ibn al-Shibl ibn Bakr al-Qaysī. He was born in al-Andalus and started his education in Cordova. He then travelled to Qayrawān in 250 A.H. to study with Yaḥyā ibn ʿUmar and later on to Sūsah. After completing his study he returned to al-Andalus and was appointed as an *Imām* to lead prayers. He died in 353 A.H. when he was more than a hundred years old<sup>53</sup>. Although it is possible that he might be the transmitter of the first version, because it is mentioned that he had studied with Yaḥyā ibn ʿUmar, it seems more likely to be Abū ʿAbd Allāh ibn Shibl since the text had clearly indicated that the *kunya* of Ibn Shibl was Abū ʿAbd Allāh, not Abū Bakr<sup>54</sup>.

The second version was transmitted by Aḥmad al-Quṣarī<sup>55</sup>. His full name is Abū Jaʿfar Aḥmad ibn Muḥammad ibn ʿAbd al-Raḥmān ibn Saʿīd

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<sup>51</sup>The study has not able to locate him. However, he was also one of the teachers of Yaḥyā ibn ʿUmar in Egypt. He had studied with the student of Ibn al-Qāsim, Ibn Wahb and Ashhab. See Ibn al-Faraḍī, *Tārīkh*. vol. 2, p. 181.

<sup>52</sup>Ibn Farḥūn, *al-Dībāj*. p. 319.

<sup>53</sup>Ibn al-Faraḍī, *Tārīkh*. vol. 2, pp. 67-8.

<sup>54</sup>See *The text (first)*. p. 103.

<sup>55</sup>See *The text (second)*. p. 31. His name also frequently occurs throughout the text. See summary of the text.



al-Quṣarī. He studied with Ishāq ibn ʿAbdūs<sup>56</sup> and transmitted the works of several scholars including those of Yaḥyā ibn ʿUmar, qāḍī ʿAbd Allāh ibn Ṭālib and others. Aḥmad al-Quṣarī was known for being devoted to learning, writing and compiling books. He was known for his honesty and accuracy in his writing of what he transmitted from the scholars of his time. In an account given by his student, Aḥmad al-Quṣarī is said to have made several inquiries of his teacher Yaḥyā ibn ʿUmar. Aḥmad al-Quṣarī asserted that Yaḥyā would give the same answers even though the inquiries were made on different occasions<sup>57</sup>. Among his students who narrated from him are Ibn al-Libād and Abū ʿAbd Allāh ibn Ḥārith al-Khushanī<sup>58</sup>. He died in 322 A.H.<sup>59</sup>.

#### 1.4. An analysis of the texts

##### 1.4.1 The Isnād

The text of the first version has clearly indicated that it consists of legal opinions of Yaḥyā ibn ʿUmar who was asked about various matters

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<sup>56</sup>Ishāq ibn ʿAbdūs. He studied with Saḥnūn together with his elder brother Muḥammad. Al-Khushanī, *Quḍāt*. pp. 182-3.

<sup>57</sup>Al-Khushanī, *Quḍāt*. p. 184.

<sup>58</sup>Abū ʿAbd Allāh ibn Ḥārith al-Khushanī (d. 361 A.H.). The author of the famous book, *Quḍāt Qurṭubah wa al-ʿUlamāʾ al-Ifriqiyyah*. He started his study in Qayrawān and later travelled to al-Andalus. He began his *riḥlah* at the age of twelve. Ibn al-Faraḍī, *Tārīkh*. vol. 2, pp. 114-5.

<sup>59</sup>Al-Khushanī, *Quḍāt*. p. 184. Makhlūf, *Ṭabaqāt*. p. 82.

related to the market. These legal opinions were then compiled by an unidentified person based on what had been transmitted to him by Abū ʿAbd Allāh ibn Shibl from his teacher Yaḥyā ibn ʿUmar<sup>60</sup>. As for the second version, at the beginning of the text, we read "Aḥmad ibn Muḥammad ibn ʿAbd al-Raḥmān reported to us from Yaḥyā ibn ʿUmar" (*ḥaddathana Aḥmad ibn Muḥammad ibn ʿAbd al-Raḥmān qāl samiʿtu Yaḥyā ibn ʿUmar yaqul*)<sup>61</sup>. It is clear that this text was transmitted by Aḥmad al-Quṣarī and was compiled later on by his students who took it from him.

#### 1.4.2. The styles and the approaches

According to the editors of the two texts, the second version is more complete than the first. This, in fact, was an assumption made by M.A. Makkī, the editor of the first version, based on the fact that the word *mukhtaṣarah* (an abridged or summary) was found at the beginning of the text. This word is not found in the second version. M.A. Makkī also points out that his assumption was confirmed by Ḥasan Ḥusnī ʿAbd al-Waḥḥāb who had a copy of the manuscript of the second version which he thought to be a "complete version" of the text<sup>62</sup>. Ḥasan Ḥusnī ʿAbd al-Waḥḥāb also

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<sup>60</sup>*The text (first)*. p. 103.

<sup>61</sup>*The text (second)*. p. 31.

<sup>62</sup>See Ḥ. Ḥ. ʿAbd al-Waḥḥāb, *al-Imām al-Māzarī*. p. 28.



stated that he intended to edit the manuscript, which in fact, only appeared in 1975<sup>63</sup>. However, it seems possible that the word *mukhtaṣarah* was an introduction to the text. This is because it outlines the relevant subjects that are to be described in detail in the text. It should be noted here that the word *mukhtaṣar* was also used by al-Shayzarī in his introduction<sup>64</sup>. Thus, probably, the word *mukhtaṣarah* was a mistake in editing the text and could be replaced by the word *munḥaṣīrah* (consisting of).

There seem to be two different approaches found in the texts. The first consists of questions and answers. As for the first version, the questions are mostly derived from unidentified persons and only on three occasions do they appear to be from the transmitter Ibn Shibl<sup>65</sup>. However, in the second version most of these questions are derived from the transmitter Aḥmad al-Quṣarī. Thus, on most occasions, we read *qīla*, *qāla* and *su'ila* Yaḥyā in the text of the first version, whereas, the words *qultu* and *sa'altu* Yaḥyā were found in the second version. Therefore, it seems probable that the text of the second version was a series of discussions between Aḥmad al-Quṣarī and his teacher Yaḥyā ibn ʿUmar. However, on certain occasions, both texts have indicated that the questions were derived

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<sup>63</sup>Ibid. See the commentary made by M.A. Makkī. in *RIEEI*. p. 62.

<sup>64</sup>Al-Shayzarī, *Nihāyah*. p. 3.

<sup>65</sup>*The text (first)*. pp. 138-9 (the sale of figs), 140 (slaughtering an animal) and 142 (*qadhf*).



from the market supervisor (*ṣāhib al-sūq*). These questions were mostly in form of verbal inquiries, but occasionally, written petitions were also made to Yaḥyā ibn ʿUmar. On some occasions, Yaḥyā gave the statements made by his teachers in order to support his opinions. This includes the statements of Mālik, Ibn al-Qāsim, Ibn Wahb, Ashhab, Ibn Mājishūn, Aṣbagh, Ibn Ḥabīb and Saḥnūn. As a matter of fact, it is in this matter that the two texts have demonstrated a very significant contrast between them. This is because the second version has provided full chains of *isnāds* of the transmitters involved, which are not to be found in the first version. Thus, the second version has also produced valuable information about the teachers of Yaḥyā ibn ʿUmar. From the text of the second version, it is obvious that Yaḥyā ibn ʿUmar has consistently attached himself to his teacher al-Ḥārith ibn Miskīn, even though he was considered as an associate of Saḥnūn ibn Saʿīd.

The second approach includes statements made by Yaḥyā ibn ʿUmar without being asked by anyone. Sometimes, Yaḥyā ibn ʿUmar referred to verses of the *Qurʾān* and the traditions to support his arguments. However, some of the traditions found in the second version have been omitted by the first version<sup>66</sup>. On other occasions, there are also statements made by the transmitters regarding certain legal decisions made mostly by *qāḍī* Ibn al-

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<sup>66</sup>See the tradition on determining the unit of measure of capacity and the tradition on price-fixing. See *The text (second)*. pp. 39 and 42-3.

Ṭālib, where Yaḥyā ibn ʿUmar was asked for his opinion regarding those matters. There are also statements made by the contemporaries of Yaḥyā ibn ʿUmar, such as Muḥammad ibn ʿAbdūs, Ḥamdīs al-Qaṭṭān<sup>67</sup> and qāḍī Ibn Marwān<sup>68</sup>. However, in the case of Ḥamdīs al-Qaṭṭān, his statements were made without been referred to Yaḥyā ibn ʿUmar<sup>69</sup>. Therefore, it seems possible that these statements were derived from the transmitters and not from Yaḥyā ibn ʿUmar. Moreover, the two texts have differed in this matter. Thus, the statement made by Ḥamdīs al-Qaṭṭān on immoral behaviour cannot be found in the first version<sup>70</sup>. On the other hand, the first version had referred to his opinion on a matter related to the method of slaughtering of an animal, which is omitted by the second version<sup>71</sup>.

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<sup>67</sup>Abū Jaʿfar Aḥmad ibn Muḥammad al-Ashʿarī known as Ḥamdīs al-Qaṭṭān (d. 289 A.H.). Ibn Farḥūn and Makhlūf have suggested that he was born in 230 A.H. This seems to be not acceptable because on the account of Ḥamdīs himself he had made a statement that he was in the company of his teacher Saḥnūn from the year 223 A.H. until the latter died in 240 A.H.. This statement can be found in the first version of the work of Yaḥyā ibn ʿUmar. Moreover, Makhlūf is a position to consider Ḥamdīs as one of the most senior students and associates of Saḥnūn. Thus, it seems that this statement of Ḥamdīs is more acceptable in this matter and it is believed that he was born much earlier than 230 A.H. Furthermore, he was a contemporary of Yaḥyā ibn ʿUmar and died in the same year as he. Ibn Farḥūn, *al-Dībāj*. p. 31. Makhlūf, *Ṭabaqāt*. p. 71. *The text (first)*. p. 141.

<sup>68</sup>Hamās ibn Marwān ibn Samāk al-Ḥamdānī (222 - 304 A.H.). He was born in Qayrawān and had studied with Saḥnūn ibn Saʿīd. He became a qāḍī in 290 A.H. Al-Khushānī, *Quḍāt*. p. 153.

<sup>69</sup>See *The text (first)*. p. 141, *The text (second)*. pp. 133, 134 and 135.

<sup>70</sup>See *The text (second)*. pp. 133-5.

<sup>71</sup>See *The text (first)*. p. 141.

Even though the subjects of the discussions found in the two texts have been divided into separate chapters, they were not properly arranged. The issues discussed in the two texts can be classified into three parts:

a) The first part in the text of the first version is from the beginning to chapter thirty<sup>72</sup>, and in the text of the second version from the beginning to chapter nineteen<sup>73</sup>, where the issues are concerned with unlawful sale transactions.

b) The second part in the text of the first version is from chapter thirty one to chapter thirty nine<sup>74</sup> and in the text of the second version from the discussion found from chapters twenty to thirty<sup>75</sup> which involves unlawful conduct, mostly not related to the acts of selling and buying, except for chapter twenty one<sup>76</sup> (the sale of tops and dolls) and twenty two<sup>77</sup> (the making and selling of *nabīdh*). However, in the text of the first version, these topics are discussed

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<sup>72</sup>*The text (first)*. pp. 103-119.

<sup>73</sup>*The text (second)*. pp. 31-76.

<sup>74</sup>*The text (first)*. pp. 119-128.

<sup>75</sup>*The text (second)*. pp. 76-98.

<sup>76</sup>*The text (second)*. pp. 83-4.

<sup>77</sup>*The text (second)*. pp. 85-6.

in chapters twenty eight<sup>78</sup> (the sale of tops and dolls) and thirty two<sup>79</sup> (the making and selling of *nabīdh*).

c) The third part in the text of the first version is from chapter forty to chapter fifty seven<sup>80</sup>, except for chapter fifty four<sup>81</sup> (on gifts for the bride) and chapter fifty five<sup>82</sup> (on *qadhf*), whereas in the text of the second version the discussions are from chapter thirty one to the end of the text<sup>83</sup> which is again concerned with unlawful sales transactions, except for chapter forty five<sup>84</sup> (on immoral behaviour). The discussions found in this part are sometimes a repetition from those of the first part, for example the discussions regarding weights, measures and fixing the price of goods. The repetition is obvious not only in terms of the arrangement of the chapters, but also the issues mentioned. The text has also repeated a number of issues in separate chapters, like matters relating to weights and measures, cheating by selling figs rubbed with oil, bread which was insufficient in weight

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<sup>78</sup>*The text (first)*. pp. 117-8.

<sup>79</sup>*The text (first)*. p. 123.

<sup>80</sup>*The text (first)*. pp. 129-143.

<sup>81</sup>*The text (first)*. pp. 141-2.

<sup>82</sup>*The text (first)*. p. 142.

<sup>83</sup>*The text (second)*. pp. 98-135.

<sup>84</sup>*The text (second)*. pp. 133-5.

and disapproval of women entering public baths who are regarded as not having a proper reason.

The two texts have also differed in terms of the arrangement of chapters. Thus, the first version puts the discussion on sellers of grain after the chapter on rubbing the figs with oil, contrary to the second version<sup>85</sup>. Even though the first version consists of fifty seven chapters and the second version has only forty five chapters, in fact, both texts are very similar. This is because sometimes the first version has divided some of the questions and answers into two separate chapters, whereas the second version combined them in one chapter. Furthermore, on some occasions the second version has merged some of the chapters of the first version into one chapter.

The contents of the two texts are very similar, except for some omissions in both of them. The first version has omitted the chapter on selling fruit and salted fish in jars and containers<sup>86</sup>, the chapter on what it is permissible for the market supervisor to receive from the vendors<sup>87</sup> and the chapter on immoral behaviour<sup>88</sup>. Sometimes, the discussion for

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<sup>85</sup>*The text (first)*. p. 109. *The text (second)*. p. 48-52.

<sup>86</sup>*The text (second)*. pp. 120-4.

<sup>87</sup>*The text (second)*. pp. 131-2.

<sup>88</sup>*The text (second)*. pp. 133-5.

certain chapters in the second version is more complete, as for example in the chapter on weights and measures<sup>89</sup>, the chapter on price-fixing<sup>90</sup>, the chapter concerning the mixing of meat<sup>91</sup> and the chapter discussing the "permissible monopoly"<sup>92</sup>. However, on some occasions the first version has also provided further information which cannot be found in the second version. They are the discussion on the sale of bitter cucumbers<sup>93</sup>, selling by a person suffering from leprosy<sup>94</sup>, the discussion on a person who had dug a pit<sup>95</sup>, the chapter on slaughtering of animals and selling their hide<sup>96</sup>, the sale of clothes infested with lice<sup>97</sup>, the chapter on basic house equipment and wedding outfit for the bride<sup>98</sup> and the chapter on *qadh*<sup>99</sup>. Based on the above discussions, it seems the statement made by the editors of the two texts that the second version is more complete than the first is not acceptable. In fact, on certain occasions, the first version has

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<sup>89</sup>*The text (second)*. pp. 38-40.

<sup>90</sup>*The text (second)*. pp. 44-47.

<sup>91</sup>*The text (second)*. pp. 69-70.

<sup>92</sup>*The text (second)*. p. 72.

<sup>93</sup>*The text (first)*. p. 114.

<sup>94</sup>*The text (first)*. pp. 129-130.

<sup>95</sup>*The text (first)*. p. 127.

<sup>96</sup>*The text (first)*. pp. 140-1.

<sup>97</sup>*The text (first)*. p. 137.

<sup>98</sup>*The text (first)*. pp. 141-2.

<sup>99</sup>*The text (first)*. p. 142.



provided some valuable information which are not found in the text of the second version. Thus, in this matter references to the work of Yaḥyā ibn ʿUmar should be made into the two texts. Further differences between the two texts will be made clear in Table 1.1 and in the paraphrase in a following chapter.

Table 1.1. The differences between the two texts

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>Introduction</b>	Found in <b>chapter one</b> (p. 103)	<b>Not found</b>
<b>Matters which require market to be supervised</b>	Found in <b>chapter two</b> (pp. 103-4)	Found in <b>chapter one</b> (pp. 31-5)

Subjects of the discussions	First version	Second version
<b>The use of different weights and measures</b>	Separated the question in <b>chapter three</b> and the answer in <b>chapter four</b> (pp. 104-5)	Combined the question and answer in <b>chapter two</b> . Included also the question on price-fixing in <b>chapter two</b> (pp. 35-40)
<b>Price-fixing</b>	Separated the question in <b>chapter eight</b> and the answer in <b>chapter nine</b> (p. 106)	Separated the question in <b>chapter two</b> and the answers in <b>chapter three</b> (pp. 40-7)
<b>Merchandise-tax levied by the millers</b>	Found in <b>chapter five</b> (p. 105)	<b>Not found</b>

Subjects of the discussions	First version	Second version
<b>Negligence of the millers</b>	Found in <b>chapters six and seven</b> (p. 105)	<b>Not found</b>
<b>Markets in two different places</b>	Discussed markets of <i>miṣr</i> and Qayrawān in <b>chapter ten</b> (p. 108)	Discussed markets of <i>qaṣr</i> and Qayrawān in <b>chapter four</b> (pp. 47-8)
<b>Adulteration of figs rubbed with oil</b>	Found in <b>chapter eleven</b> (p. 109)	Included also the discussions on milk added with water and bread insufficient in weight in <b>chapter six</b> (pp. 50-2)

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>Sellers of grains</b>	Included also the discussions on milk added with water and bread insufficient in weight in <b>chapter twelve</b> (p. 109)	Found in <b>chapter five</b> (pp. 48-9)
<b>The sale of unripe fruit and those sold in basket</b>	Found in <b>chapters thirteen and fourteen</b> (pp. 110-111)	Found in <b>chapter seven</b> (pp. 52-4)
<b>Bakers selling bread that contains stones</b>	Found in <b>chapter fifteen</b> (p. 111)	Found in <b>chapter eight</b> (pp. 54-6)
<b>Bread insufficient in weight</b>	Found in <b>chapter sixteen</b> (p. 111)	Found in <b>chapter nine</b> (pp. 56-9)

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>Bakers mixing the wheat of good quality with the lesser</b>	Found in <b>chapter seventeen</b> (p. 112)	Found in <b>chapter ten</b> (p. 59)
<b>Millers grind the wheat with remnants</b>	Found in <b>chapter eighteen</b> (p. 112)	Found in <b>chapter eleven</b> (pp. 59-60)
<b>Adulteration in weights and in food sold</b>	Found in <b>chapters nineteen and twenty</b> (pp. 112-3)	Found in <b>chapter twelve</b> (pp. 60-3)
<b>Mixing cows' milk with goats</b>	Found in <b>chapter twenty one</b> (pp. 113-4)	Found in <b>chapter thirteen</b> (pp. 63-5)
<b>The sale of bitter cucumber</b>	Found in <b>chapter twenty two</b> (p. 114)	<b>Not found</b>



Subjects of the discussions	First version	Second version
The sale of spoiled eggs. Mixing honey of good quality with the lesser, the sale of clarified butter and oil. Mixing old oil with new	Found in <b>chapter twenty three</b> (pp. 114-5)	Found in <b>chapters fourteen and fifteen</b> but omitted the discussion on the sale of spoiled eggs (pp. 65-7)
Butchers mixing the meats and the vendors mixing the oil and the butter	Found in <b>chapters twenty four and twenty five</b> (pp. 115-6)	Included also the discussion on blowing into carcasses in <b>chapter sixteen</b> (pp. 68-71)
The disapproval of blowing into carcasses	Found in <b>chapter twenty six</b> (pp. 116-7)	Included in <b>chapter sixteen above</b> (Butchers mixing the meats) (pp. 70-1)

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>"Permitted monopoly"</b>	Found in <b>chapter twenty seven</b> (p. 117)	Found in <b>chapter seventeen</b> (pp. 71-2)
<b>The sale of dolls and tops</b>	Found in <b>chapter twenty eight</b> (pp. 117-8)	Found in <b>chapter twenty one</b> (pp. 83-4)
<b>The sale of unripe dates</b>	Found in <b>chapter twenty nine</b> (p. 118)	Found in <b>chapter eighteen</b> (pp. 73-4)
<b>The sale of shrunken clothes</b>	Included in <b>chapter twenty nine above</b> (The sale of unripe fruit) (p. 118)	Included also the case of missing vendors in <b>chapter nineteen</b> (pp. 74-5)



Subjects of the discussions	First version	Second version
Action taken against missing vendors	Found in <b>chapter thirty</b> (pp. 118-9)	Included in <b>chapter nineteen above</b> (The sale of shrunken clothes) (pp. 75-6)
Invitation to a wedding banquet and playing with musical instruments	Found in <b>chapter thirty one</b> (pp. 119-122)	Found in <b>chapter twenty</b> (pp. 76-83)
The making and selling of <i>nabīdh</i>	Found in <b>chapter thirty two</b> (p. 123)	Found in <b>chapter twenty two</b> (pp. 85-6)
The use of public baths	Found in <b>chapters thirty three and fifty six</b> (pp. 123-4 and pp. 142-3)	Found in <b>chapters twenty three and included in chapter thirty seven</b> (hoarding) (pp. 86-9 and p. 117)

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>Crying aloud over the death of relatives</b>	Found in <b>chapter thirty four</b> (pp. 124-5)	Found in <b>chapter twenty four</b> (pp. 89-91)
<b>Visiting graves</b>	Found in <b>chapter thirty five</b> (p. 125)	Found in <b>chapter twenty five</b> (pp. 91-2)
<b>Wearing shoes that make noises</b>	Found in <b>chapter thirty six</b> (p. 126)	Found in <b>chapter twenty six</b> (pp. 93-4)
<b>Spilling waters and cleaning the market place</b>	Found in <b>chapter thirty seven</b> (pp. 126-7)	Found in <b>chapters twenty seven and twenty eight</b> (pp. 94-5)
<b>Liability against the person who dug a pit. Regulation concerning doors to houses in a narrow lane</b>	Found in <b>chapter thirty eight</b> (p. 127)	Found in <b>chapter thirty. Omitted the discussion on digging a pit</b> (p. 98)

Subjects of the discussions	First version	Second version
<i>Ahl al-dhimmah</i>	Found in <b>chapter thirty nine</b> (p. 128)	Found in <b>chapter twenty nine</b> (pp. 96-7)
The sale by a blind person and those suffering from leprosy	Found in <b>chapter forty</b> (p. 129)	Found in <b>chapter thirty one. Omitted</b> the sale by those who are sick (pp. 98-9)
A person suffering from leprosy	Found in <b>chapter forty one</b> (pp. 129-130)	<b>Not found</b>
The deficient in weights and measures	Found in <b>chapters forty two and forty four</b> (pp. 130-2)	Found in <b>chapters thirty two and thirty five</b> (pp. 99-103)
Price fixing by force	Found in <b>chapter forty three</b> (p. 132)	Found in <b>chapter thirty three</b> (pp. 103-4)

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>Giving short weights and measures</b>	Found in <b>chapter forty five</b> (pp. 133-4)	Found in <b>chapter thirty four</b> (pp. 108-111)
<b>Hoarding</b>	Found in <b>chapters forty six and forty seven</b> (pp. 135-7)	Found in <b>chapter thirty seven</b> (pp. 113-7)
<b>Selling to a stranger</b>	Found in <b>chapter forty eight</b> (p. 137)	Found in <b>chapter thirty eight</b> (p. 118)
<b>The sale of fruit and salted fish in jars and containers</b>	<b>Not found</b>	Found in <b>chapter forty</b> (pp. 120-4)
<b>The sale of clothes infested with lice</b>	Found in <b>chapter forty nine</b> (p. 137)	<b>Not found</b>

<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>The sale of ashes</b>	Found in <b>chapter fifty</b> (p. 137)	Found in <b>chapter forty one</b> (pp. 124-5)
<b>Money-changers</b>	Found in <b>chapter fifty one</b> (p. 138)	Found in <b>chapter forty two</b> (pp. 125-8)
<b>The sale of beans, figs and the like.</b>  <b>The rights of workers to receive their wages</b>	Found in <b>chapter fifty two</b> (pp. 138-140)	Found in <b>chapter forty three</b> (pp. 128-131)
<b>Slaughtering an animal</b>	Found in <b>chapter fifty three</b> (pp. 140-1)	<b>Not found</b>
<b>Basic house equipment and wedding outfit for the bride</b>	Found in <b>chapter fifty four</b> (pp. 141-2)	<b>Not found</b>



<b>Subjects of the discussions</b>	<b>First version</b>	<b>Second version</b>
<b>A discussion on <i>qadhf</i></b>	Found in <b>chapter fifty five</b> (p. 142)	<b>Not found</b>
<b>Things that can be taken by the market supervisor</b>	<b>Not found</b>	Found in <b>chapter forty four</b> (pp. 131-2)
<b>Immoral behaviour</b>	<b>Not found</b>	Found in <b>chapter forty five</b> (pp. 133-5)
<b>Mixing the meats with hearts and stomach</b>	Found in <b>chapter fifty seven</b> (p. 143)	Found in <b>chapter thirty nine</b> (pp. 119-120)

#### 1.4.3. The important elements in the texts

There are three main elements in the discussion: One of these is concerned with the person who is regarded as responsible for carrying out the duty of supervising the market. The second is regarding the duties to be carried out and the third deals with the punishments for offenders.

Regarding the first element, the texts make it clear that the duty of supervising the market was the responsibility of the Governor<sup>100</sup>. He then would entrust this duty to a special officer known as *nāẓir ʿalā al-sūq* and also *ṣāhib al-sūq*<sup>101</sup>. Regarding these two terms, the texts have used the term *ṣāhib al-sūq* when they are referring to the market supervisors of Qayrawān<sup>102</sup> and Sūsah<sup>103</sup>. The same term was used to refer to the market supervisor during the time of Mālik ibn Anas<sup>104</sup>. However, the term *nāẓir ʿalā al-sūq* was applied when Yaḥyā ibn ʿUmar was explaining the theory of the responsible person to carry out the duty of supervising the market. Thus, this term was used together with the terms *wālī* (the Governor) and *qāḍī*<sup>105</sup>. On that basis, it could be assumed that the term *nāẓir ʿalā al-sūq* is more general than the term *ṣāhib al-sūq*. It should be noted that at this stage, the duty of the supervision of the market and those related matters were carried out by the Governor, the *qāḍī* and the market supervisor (*ṣāhib al-sūq* and *nāẓir ʿalā al-sūq*).

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<sup>100</sup>*The text (first)*. pp. 103 and 105. *The text (second)*. pp. 31, 39 and 47.

<sup>101</sup>*The text (first)*. pp. 103, 108, 112, 128 and 129. *The text (second)*. pp. 31-2, 33-4, 37, 38, 40, 47, 57, 73, 96, 98, 103, 104 and 115.

<sup>102</sup>*The text (first)*. p. 128. *The text (second)*. p. 96.

<sup>103</sup>*The text (first)*. p. 129. *The text (second)*. p. 98.

<sup>104</sup>*The text (first)*. p. 132. *The text (second)*. pp. 73, 103.

<sup>105</sup>*The text (second)*. pp. 47, 73.



With regard to the second element, the texts mention various duties which can be classified into two separate categories:

- i) the duties that are concerned with unlawful sales transactions in the market,
- ii) the duties which do not involve sale transactions.

Regarding the duties that are concerned unlawful sales transactions, they are as follows:

- a) Price-fixing (*tas<sup>c</sup>īr*)<sup>106</sup>, (Further discussion on this matter will be made at the end of chapter two of this thesis)
- b) Administering the use of standard weights and measures and punishing those who falsify them after a warning has been given<sup>107</sup>,
- c) Supervising the vendors so that they can be prevented from conducting unlawful sales transactions. Thus, the public will be protected against cheating, adulteration of the goods and negligence of the vendors. [This is the main discussion of the work of Yaḥyā ibn ʿUmar].
- d) Observing the rights of the purchaser concerning the repayment, the right of option (*khiyār*) and the right of workers to receive their wages<sup>108</sup>.

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<sup>106</sup>*The text (first)*. pp. 106, 132, 135-7. *The text (second)*. pp. 40-7, 103-4, 113-7.

<sup>107</sup>*The text (first)*. pp. 104-5, 133-4. *The text (second)*. pp. 35-40, 108-111.

<sup>108</sup>*The text (first)*. pp. 138-140. *The text (second)*. pp. 128-131.

Matters relating to unlawful conduct which do not involve sales transactions are as follows:

- a) Obligation to respond to an invitation of a wedding and playing with musical instruments<sup>109</sup>
- b) The use of public baths<sup>110</sup>
- c) Crying aloud over the death of relatives<sup>111</sup>
- d) Visiting graves<sup>112</sup>
- e) Wearing shoes that make noises<sup>113</sup>
- f) A door of a house situated in a narrow lane. However, the first version has also included the discussion on the person who digs a pit in front of his house<sup>114</sup>
- g) *Ahl al-dhimmah*<sup>115</sup>
- h) A person suffering from leprosy (*judhām*). However, the second version omits this<sup>116</sup>

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<sup>109</sup>*The text (first)*. pp. 119-122. *The text (second)*. pp. 76-83.

<sup>110</sup>*The text (first)*. pp. 123-4, 142-3. *The text (second)*. pp. 86-9, 117.

<sup>111</sup>*The text (first)*. pp. 124-5. *The text (second)*. pp. 89-91.

<sup>112</sup>*The text (first)*. p. 125. *The text (second)*. pp. 91-2.

<sup>113</sup>*The text (first)*. p. 126. *The text (second)*. pp. 93-4.

<sup>114</sup>*The text (first)*. p. 127. *The text (second)*. p. 98.

<sup>115</sup>*The text (first)*. p. 128. *The text (second)*. pp. 96-7.

<sup>116</sup>*The text (first)*. pp. 129-130.

- i) Slaughtering an animal. However, the second version omits this<sup>117</sup>
- j) Basic house equipment and wedding outfit (*jihāz*) for the bride. However, the second version omits this<sup>118</sup>
- k) Immoral behaviour. The first version omits this. However, it includes the discussion on *qadh*<sup>119</sup>.

The third element of the discussion is concerned with the punishments for offenders, which are as follows:

- a) Returning defected goods
- b) Paying compensation
- c) Destroying unlawful musical instruments and pots for making *nabīdh*
- d) Confiscating the goods
- e) Beating
- f) Parading in the market area
- g) Banning from the market
- h) Detention
- i) Being chained and detained at home. This punishment is for young offenders. However, the first version omits this.

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<sup>117</sup>*The text (first)*. pp. 140-1.

<sup>118</sup>*The text (first)*. pp. 141-2.

<sup>119</sup>*The text (first)*. p. 142. *The text (second)*. pp. 133-5.

Further discussion on this third element will be made in chapter three of this thesis.

Based on the above information, the texts seem to suggest that there are two important aspects of the supervision: One of these is concerned with economic activities in the market and the second deals with moral and religious behaviour. However, in some cases, the texts have included some discussions on matters related to the health and the basic administration of the town. Examples of these are in the cases when Yaḥyā ibn ʿUmar disapproved of the sale of unripe dates soaked in vinegar<sup>120</sup> and the practice of the vendors who were blowing into the carcasses because such acts might have spoiled the food and be harmful to the person who had eaten them<sup>121</sup>. Also, the disapproval of a person who is suffering from leprosy to take ablution and wash himself in a running water because other healthy person might be affected by him<sup>122</sup>. With regard to the basic administration of the town, Yaḥyā did not allow the house owners who are living in a narrow lane to create a door or an entrance to their house which would obstruct the passers-by<sup>123</sup>. He also emphasised that the vendors should be held responsible to ensure cleanliness in the market place,

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<sup>120</sup>*The text (first)*. p. 118. *The text (second)*. pp. 74-5.

<sup>121</sup>*The text (first)*. pp. 116-7. *The text (second)*. pp. 70-1.

<sup>122</sup>*The text (first)*. pp. 129-130.

<sup>123</sup>*The text (first)*. p. 127. *The text (second)*. p. 98.

particularly in matters concerning with the cleaning the mud from it<sup>124</sup>. Thus, it could be concluded that the subjects of supervision discussed in the texts involve four aspects; economic activities, moral and religious practices, health and basic administration of the town. It should be noted here that it seems that the purpose of the supervisions was to eradicate practices in those four aspects which are contradictory to Islamic law. Thus, Yaḥyā ibn ʿUmar, who himself was one of the great Mālikī jurists in North Africa had rendered his legal opinions based on his understanding of the application of Islamic law and those of his teachers. He also referred to verses of the *Qurʾān* and the traditions of the Prophet to support the statements that he had made. Above all, both texts clearly indicate that they are a compilation of legal opinions, mostly made by Yaḥyā ibn ʿUmar.

Although the words *ḥisbah* or *muḥtasib* are not found in the two texts, by referring to the three main elements mentioned above, the work of Yaḥyā ibn ʿUmar can, in fact, be considered as the earliest work on *ḥisbah*. Thus, similar discussions on these three main elements have been carried out by later jurists in their works on *ḥisbah*, which will be studied in the subsequent chapters of this thesis. Regarding the first element, according to Yaḥyā ibn ʿUmar, the duties of supervising the market and other related matters which were later known as *ḥisbah* were carried out

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<sup>124</sup>*The text (first)*. pp. 126-7. *The text (second)*. pp. 94-5.

by the Governor, the *qāḍī* and the market supervisor (*ṣāhib al-sūq* or *nāẓir ʿalā al-sūq*). This could be because the office of a *muḥtasib* did not exist at that time. Thus, his teacher Saḥnūn ibn Saʿīd had to assimilate some of these duties into his office of a *qāḍī*<sup>125</sup>. Furthermore, the second and third elements of the texts had shown some resemblances to the later works on *ḥisbah*. Thus, the *muḥtasib* was then held responsible to carry out the duties that are extended from the market to cover all four aspects. The fact that there had been an increase in the duties of the *muḥtasib* in the later period in matters relating to the moral and religious aspects, health and administration of the town could be because during the time of Yaḥyā ibn ʿUmar, the institution of *ḥisbah* was only at a preliminary stage.

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<sup>125</sup>*Qāḍī* ʿIyāḍ, *Tartīb al-Madārik*. 2: 600. Ibn Farḥūn, *al-Dībāj*. p. 163. Makhlūf, *Ṭabaqāt*. pp. 69-70. See also previous discussion in the Introduction p. 12.



## CHAPTER TWO

### A paraphrase of the work of Yaḥyā ibn ʿUmar

There is some difficulty in arranging the paraphrase of the two texts. This, as discussed earlier in the analysis is due to the fact that both texts have omitted some of the chapters, so that there are some discussions which can be found in the first version but not in the second and vice versa. Thus, it seems unacceptable for this study to follow the arrangement of chapters used by the two versions. Instead, an alternative classification is needed, that is by merging the two texts, which would eventually include the discussions that have been omitted by both of them.

### Introduction

This book is a compilation of legal opinions on matters that are concerned mainly<sup>1</sup> with the supervision of the market. It consists of various chapters on matters related to weights and measures, on price-fixing, on the sale of unripe fruit, on the bakers and the butchers, on the

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<sup>1</sup>This word is added to the texts. This is because as mentioned earlier in the analysis that some of the discussions found in the texts are not related to the acts of selling and buying in the market. Instead, these matters are mainly involved with those practices contrary to the correct moral conduct and religious teachings of Islamic law. See pp. 73-4 above.

sale of tops and dolls, on adulteration and cheating with various goods, on musical instruments and *nabīdh*, on public-baths, on crying aloud over the death of relatives and visiting their graves, on shoes that make noises, on the person who had spilled the water and caused injuries to others, on cleaning the market place, on the person who had dug a pit that had caused injuries to someone else, on a door to a house, on *ahl al-dhimmah*, on persons who are suffering from serious illnesses, on cheating in weights and measures, on price-fixing and on hoarding. Inquiries in these matters have been made to Yaḥyā ibn ʿUmar who then gave his legal opinions and these were compiled based on what had been transmitted from Abū ʿAbd Allāh ibn Shibl by his students who took it from him<sup>2</sup>.

**Chapter One: A statement on matters which require markets to be supervised**

Yaḥyā ibn ʿUmar reported<sup>3</sup> that it is necessary for the Governor (*wālī*) who is seeking justice for his people to supervise (*naẓar*) the market of his people and entrust a person who is the most trusted in his city with the duty of observing (*ʿahida*) the market and carrying out tests to

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<sup>2</sup>However, the second version omits this. *The text (first)*. p. 103.

<sup>3</sup>The second version held that this statement of Yaḥyā was narrated by the transmitter, Aḥmad al-Quṣarī to his students. However, the first version omit this. *The text (first)*. p. 103. *The text (second)*. p. 31.

determine the correct measures (*ʿāyara*)<sup>4</sup> on the instruments for weighing (*ṣanaḡāt*)<sup>5</sup>, the weights (*mawāzīn*) and the measures of capacity (*makāyil*)<sup>6</sup>. If the official appointed finds someone who has changed them, he will punish him according to the offence committed and in consultation with the Governor. Then he should ban the offender from the market until his repentance and the transformation of his character (*niyābah*) has become apparent<sup>7</sup>.

The Governor must not ignore<sup>8</sup> a situation where counterfeit coins (*mubahraḡah*) appear in the market, or coins which have been mixed with copper (*nuḡās*). He should be strict in the matter and investigate the person who produces them. When he achieves that and whether it involves only one person or a syndicate, he should warn (*nakāl*) them and give an order to punish them by parading them (*ṭawāf*)<sup>9</sup> in the market area, by driving (*sharada*) them from behind so that they will fear the severity of the penalty in the Hereafter which has been revealed for them and they will

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<sup>4</sup>*Lane*. Book 2:2208. *Munjid*. p. 537.

<sup>5</sup>Singular, *ṣanaḡah* or *sanḡah*. *Lane*. Ibid and 2:1441. *Hava*. p. 339. *Munjid*. p. 354.

<sup>6</sup>See *EI(2)*. vol. 3, pp. 117-121.

<sup>7</sup>*The text (first)*. p. 103. *The text (second)*. p. 33.

<sup>8</sup>The first version reads this as *yuḡbal* (to accept), whereas the reading of the second version was *yughfal* (to neglect or ignore). The meaning of the later seems to be more acceptable than the former. See *The text (first)*. p. 103. *The text (second)*. p. 33.

<sup>9</sup>See also the penalty of public disclosure (*tashhīr*). M.S. El-Awa, *Punishment in islamic Law*. 1982, pp. 102-3.

also be detained for a certain period of time according to the opinion of the Governor. The Governor then must entrust a trustworthy person to observe the matter so that the people's *darāhim*<sup>10</sup> and *danānīr*<sup>11</sup> will be sound (*yaṭīb*) and the coins (*nuqūd*)<sup>12</sup> will be protected<sup>13</sup>.

Chapter Two: **Legal decisions on matters related to measure of capacity (*mikyāl*), weight (*mīzān*), *amdād*<sup>14</sup>, *afqizah*<sup>15</sup>, *arṭāl*<sup>16</sup> and *awāqī*<sup>17</sup>**

A written petition was made by someone to Yaḥyā ibn ʿUmar concerning the sale of wheat (*qamḥ*) and barley (*shaʿīr*) using measures of

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<sup>10</sup>Singular *dirham*, silver coin. *Lane*. 1:876.

<sup>11</sup>Singular *dīnār*, gold coin. *Lane*. 1: 919. See also *EI(2)* vol. 2, pp. 297-8 and 319-320.

<sup>12</sup>Singular *naqd* which is applies to both silver and gold coins. *Lane*. 2:2836.

<sup>13</sup>*The text (first)*. pp. 103-4. *The text (second)*. pp. 34-5.

<sup>14</sup>*Amdād*, singl. *mudd*. A certain kind of measure of capacity (*mikyāl*). It is mostly used to measure grain like corn. *Lane*. 2:2697. See also *Munjid*. p. 751. *Hava*. p. 712. *Hans Wehr*. p. 897.

<sup>15</sup>*Afqizah*, singl. *qafiz*. A certain measure of capacity consisting of ten *makākīk*, according to the people of ʿIraq, or twelve times what is termed of the *mann*. See also *ṣaʿ*, which is a kind of measure of capacity but with different standard. *Lane*. 2:1746. See also *Munjid*. p. 646. *Hava*. p. 620. *Hans Wehr*. p. 781.

<sup>16</sup>*Arṭāl*, singl. *raṭl*. A weight in various quantities according to places. According to Lane, *raṭl* was used as an instrument for weighing or which one used as a measure of capacity, or rather both of them, as a pound-weight and a pint-measure. The half of what is termed as *mann* according to the standard of Baghdad is twelve *awqīyyah* (ounce). The *awqīyyah* being an *istār* and two thirds. The *istār* being four *mathāqīl* and half. *Lane*. 1:1102. *Hava*. p. 266. *Hans Wehr*. p. 345.

<sup>17</sup>*Awāqī*, singl. *awqīyyah*. A certain weight and it is said that 12 *awqīyyah* are equal to 2564g. *Munjid*. p. 266. See also *Lane*. Ibid.

capacity devised by the vendors (*ahl al-ḥawānīt*), which differed from that of the authorities (*sulṭān*) whose origin was unknown and when some vendors used a measure small in size and others a bigger one, whilst the public had accepted the standard measures (*maʿāyīr*) laid down by the market supervisor<sup>18</sup>.

Yaḥyā ibn ʿUmar answered that such a situation where the wheat and barley were sold using different measures should not happen in the markets of the Muslim cities (*ḥawāḍir*). If the community had a ruler, he should fear God and he should inform his subjects of the standard weights and measures, so that they will be known to them. The same applies to the instruments for weighing, like the *qanāṭīr*, *arṭāl*, *waybāt* and *aqfīzah*. According to Yaḥyā ibn ʿUmar, the *arṭāl* are laid down on weights based on the tradition of the Prophet in relation to the payment of alms-tax on silver and gold (*zakāt al-ʿayn*)<sup>19</sup>, when he said: "There is no tax on less than five *awāq*<sup>20</sup> of silver <sup>21</sup>, and there is no tax less than twenty *dīnār*<sup>22</sup>". The *awqīyyah* is forty *dirhams* in weight and the amount of

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<sup>18</sup>*The text (first)*. p. 104. *The text (second)*. pp. 35-6.

<sup>19</sup>*Lane*. 2:2216.

<sup>20</sup>See *wariqa*, plur. *awāq* or *wirāq*, silver coins which equal forty *dirhams*. See next sentence. *Lane*. supp. p. 3051. *Hava*. 864.

<sup>21</sup>Mālik ibn Anas, *Muwatṭaʿ*. (*riw. al-Shaybānī*). p. 114. *Muwatṭaʿ*. (*riw. al-Laythī*). p. 197. *Muwatṭaʿ*. (*riw. al-Suyūṭī*). 1: 188-9. See also transl. A. Bewley, p. 93.

<sup>22</sup>See Mālik ibn Anas, *al-Mudawwanah al-Kubrā*. 1: 242-3.



weight of *danānīr* is for every ten *dirham* equal to seven *danānīr* of *mathāqīl*<sup>23</sup>. Therefore, the Governor should determine the unit of weights of the *arṭāl* and the *qanāṭīr* on that basis and he should command his subjects not to change them. As for someone who has changed the standard measure, he should be punished and banned from the market until his repentance has become apparent<sup>24</sup>.

The Governor should lay down the unit of measure for the measures of capacity of his subjects, like *waybāt* and *aqfīzah* based on the measure of capacity imposed by the Prophet for the payment of the alms-tax on grains in a tradition, in which he said: "There is no tax on less than five *awsuq*<sup>25</sup>". One *wasāq* equals sixty *awṣāʿ* and one *ṣāʿ* equals four *amdād* of the Prophet's measure of a *mudd*. The Governor has to determine the measures of capacity based on the interest of his people by introducing matters that are beneficial to them and removing any inconveniences. This would be applied to all kinds of measures of capacity, as had been decided for the unit of measure for the *waybāt* and *aqfīzah*. Then he should warn his subjects not to change any amount of the measures of capacity and the

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<sup>23</sup>The first version has omitted the discussion found from this section until the end of the chapter. *The text (first)*. pp. 104-5. *The text (second)*. p. 38.

<sup>24</sup>*The text (second)*. p. 38.

<sup>25</sup>Mālik ibn Anas, *Muwattaʿ*. (riw. *al-Shaybānī*). op.cit. *Muwattaʿ*. (riw. *al-Laythī*). op.cit. *Muwattaʿ*. (riw. *al-Suyūṭī*). op.cit. *Awsuq*, singl. *wasāq*; Camel's load. *Lane*. supp. p. 3053. *Hava*. p. 870. See also *wīqr*. *Lane*. 2: 2961.



person who does so is liable for punishment and will be banned from the market until his repentance has become apparent<sup>26</sup>.

When the Governor neglects this duty, or when the city does not have one, members of the community who are regarded as the best amongst them, including the honoured and the pious, will gather together and decide on matters, so that their weights and measures of capacity will be as has been described. When the selected committee have determined the standard measures and weights, they will disclose them to the public and compel their use and warn the public not to change them either by adding to or reducing them. The penalties for those who violate the measures and weights determined by the selected committee are the same as those imposed by the Governor, where they will be punished and banned from the market until their repentance has become apparent<sup>27</sup>.

### Chapter Three: Legal decisions on price-fixing (*tas'ir*)

The petitioner then asked Yaḥyā ibn 'Umar on the matter involving the price (*qīmah*)<sup>28</sup> which had been laid down for the butchers (*jazzārīn*)

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<sup>26</sup>*The text (second)*. p. 39.

<sup>27</sup>*The text (second)*. pp. 39-40.

<sup>28</sup>It seems that this petition was made by the same person as in the above discussion which was concerning the weights and measures since they were putted together by the text of the second version. However, for the purpose of this study, this petition is placed next to the answers given by Yaḥyā which was in fact, the arrangement found in the first version. *The*

and the vendors who are selling butter (*saman*), honey (*ʿasal*), oil (*zayt*) and fat (*shahm*). If they were to be left without being informed about the price, the public might be exploited because of the negligence (*khiffah*) of the authorities. The petition then required Yaḥyā to explain whether such an act is permitted to them and the public. If that is permitted, what action should be taken against the vendors who violate the rules that have been decided by the authorities<sup>29</sup>.

In this matter Yaḥyā ibn ʿUmar maintained that it is obligatory for each Muslim to adhere to the Prophetic traditions and follow his commands. If the Muslims do this and behave accordingly, their God will grant them what they desire. This has been demonstrated by the *Qurʾān* which says: "If the people of the towns had but believed and feared God, we should indeed open out to them (all kinds of) blessings from the heaven and earth, but they rejected (the truth) and we brought them to book for their misdeeds<sup>30</sup>". The *Qurʾān* also says: "If only they had stood fast by the Torah and the Gospel and all the revelations that were sent down to them by their Lord, they would have enjoyed happiness from every side<sup>31</sup>".

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*text (first)*. p. 106. *The text (second)*. p. 36.

<sup>29</sup>*The text (first)*. loc.cit. *The text (second)*. loc.cit.

<sup>30</sup>*Al-Qurʾān*. 7:96. *The text (first)*. p. 107. *The text (second)*. p. 41.

<sup>31</sup>*Al-Qurʾān*. 5:66. *The text (first)*. loc.cit. *The text (second)*. loc.cit.

With regard to price-fixing, Yaḥyā ibn ʿUmar then said that the matter has been explained by a tradition of the Prophet. This had been narrated to him by his teachers; Saḥnūn ibn Saʿīd, al-Ḥārith ibn Miskīn and Abū al-Ṭāhir from ʿAbd Allāh ibn Wahb from Ibn Lahīʿah<sup>32</sup>, from Sulaymān ibn Mūsā<sup>33</sup> from Thābit al-Bunānī<sup>34</sup> from Anas ibn Mālīk<sup>35</sup> saying that people came to see the Prophet and said: "O Messenger of God, fix the price for us". The Prophet replied: "O people, when the price is high or low it is by the Will of God and I hope to meet Him when no one will claim injustice against me either for property or blood"<sup>36</sup>.

Yaḥyā ibn ʿUmar then reported Ibn Wahb's account which he narrated from people different from the above mentioned, saying that one day the Prophet was angry and he said: "The market is in the hand of God, He will reduce the price and raise it". Then the Prophet walked towards the

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<sup>32c</sup>Abd Allāh ibn Lahīʿah (97-174/715-790) who was a *qāḍī* of Egypt in 154 A.H., during the reign of al-Manṣūr the Abbasid caliph. Al-Ziriklī, *al-Aʿlām*. 4:115.

<sup>33</sup>Sulaymān ibn Mūsā known as al-Ashdaq (d. 119/737). Ibn Lahīʿah regards him as a master of various fields of knowledge. Ibn Ḥajar, *Tahdhīb al-Tahdhīb*. 4:226. Al-Ziriklī, *al-Aʿlām*. 3:135.

<sup>34</sup>Abū Muḥammad Thābit ibn Aslam al-Bunānī (d. 127 A.H.), the Successor (*tābiʿūn*) who was in company of Anas ibn Mālīk for forty years in Baṣrah. Abū Saʿd al-Samʿānī, *Al-Ansāb*. vol. 2, pp. 329-330. See also Ibn al-Athīr, *Al-Lubāb fī Tahdhīb al-Ansāb*. vol. 1, p. 145.

<sup>35</sup>Anas ibn Mālīk (10 before Hijrah - 93/ 612-712). After the death of the Prophet, he moved to Damascus and later on to Baṣrah. It is said that he was the last Companion who died in Baṣrah. Ibn Saʿd, *Ṭabaqāt*. 7:10. Al-Ziriklī, *al-Aʿlām*. 1:24-5.

<sup>36</sup>See Ibn al-Athīr, *Nihāyah*. vol 2, p. 368. In fact, this matter is disputed by the jurists. See the discussion below on the problem of price-fixing. However, the first version omits this tradition. *The text (second)*. pp. 41-2.

people and asked them to take out their goods and put them on clay vessels (*barānī*) and sell them as they liked, but not speak and claim God's support for the tradition that he has mentioned, instead they should ask Him for His bounty"<sup>37</sup>. Similarly, Yaḥyā ibn ʿUmar was informed by one of his teachers from Ibn Wahb, he said: "I heard Mālik ibn Anas said: "It is not permitted to fix the price for the vendors because that is unjust (*ẓulm*). However, those vendors who had reduced their prices from that of the market will be banned from the market"<sup>38</sup>. Yaḥyā ibn ʿUmar holds that this is the opinion that he chooses for himself, that it is not permissible to fix the price but those vendors whose price is lower than that of the market, will be banned from the market. This was the practice of ʿUmar ibn al-Khaṭṭāb when he instructed a man selling raisins (*zabīb*) for a price lower than that of the market either to raise his price or leave the market. Yaḥyā ibn ʿUmar then said that he was informed by some of the Medinans that those governors (*wulāt*) who follow the practice of ʿUmar are correct, but as for someone who imposes on people by fixing the price of their goods, he is ignorant of the tradition and will be considered guilty on the day of

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<sup>37</sup>See *Kanz al-ʿUmmāl*. vol. 4, p. 103. However, the first version omits this. *The text (second)*. pp. 43-4.

<sup>38</sup>*The text (first)*. p. 107. *The text (second)*. p. 44.

Resurrection, because he is giving the purchaser things that are not lawful to him<sup>39</sup>.

Yaḥyā ibn ʿUmar then said that if the vendors were unanimous not to sell their goods except according to what they wanted, which will cause inconveniences to the public and destruction to the market, the Governor has a right to ban them from the market. In this matter the Governor should act in the interest of the public which will bring them benefit by replacing the vendors with other law-abiding vendors. This would in turn contribute towards the vendors with a good profit and the purchasers will also be pleased with that profit because of the benefit they have received and the inconveniences that had been removed from them<sup>40</sup>.

Yaḥyā ibn ʿUmar argued that the reason for not allowing the dissimilarity in price is to avoid other vendors who are selling the same item at a higher price to feeling annoyed (*taṭāwal*) when they saw someone

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<sup>39</sup>*The text (second)* p. 44. However, the first version omits this. This matter was in fact, disputed by the Mālikīs and the Ḥanbalīs, on whether the public authorities has a right to determine and fix a standard price for the vendors who in fact, have accepted the common price of the public. Mālik and Ibn al-Qāsim held this as not permissible because it would be unjust to the vendors. The same was the opinion of Yaḥyā ibn ʿUmar. However, some of the Mālikīs like Ibn Ḥabīb and the Ḥanbalīs maintained that the public authorities are allowed to fix the price for the vendor. They argue that this matter was, in fact, a settlement for an equivalent price (*thaman mithl*), which will be achieved through a meeting held by the public authorities attended by the vendors and the public in order to negotiate for an agreed price amongst them. Ibn Qayyim, *al-Ṭuruq*, pp. 264-5.

<sup>40</sup>The first version has omitted this section and the rest of the sections in this chapter. *The text (second)*, p. 45.



selling it at a cheaper price. This, according to him, is because the market is visited by all kinds of people and some of them do not know the actual price of the market. Therefore, when a person approaches the vendor who is selling at a cheaper price and asks for the price, the person will believe that it is the actual price of the market and so he will buy from him. Then another person comes after him who bought from that same vendor without asking the price from other vendors or knowing that vendor. When the other vendors know this, they will reduce their prices from what they were previously selling at. They might withhold some of their goods and refuse to sell them at their previous price but settle at that cheaper price. Alternatively if nobody wants to buy their goods except at that cheaper price, they will withdraw them. This will therefore, inflate the price (*ghalā'*), causing harm to the public in general, by just allowing that person to sell at a lower price and refuse to follow the market's price which is in use by the other vendors. For that matter Yaḥyā ibn ʿUmar chooses to adopt the action of ʿUmar ibn al-Khaṭṭāb when he instructed the seller of raisins to increase the price or leave the market. Yaḥyā ibn ʿUmar then emphasises that the person who was banned from the market will only come back when he agrees that his price will be the same as that of the market<sup>41</sup>.

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<sup>41</sup>*The text (second).* pp. 45-7.



According to Yaḥyā ibn ʿUmar these duties are to be carried out by the Governor, the *qāḍī* and the market supervisor (*nāẓir*) based on the above mentioned ruling<sup>42</sup>.

#### Chapter Four: **A legal decision on merchandise-tax (*maks*) levied by the millers on the public**

On this matter, the millers (*ṭaḥḥān*) cannot impose the tax unless the grain is measured according to the standard measure of capacity which had been known to the public<sup>43</sup>.

#### Chapter Five: **A legal decision on the negligence of the millers**

The millers may employ any person to grind the grain. The person should then be responsible for his action. Thus, if the mill had been broken and had damaged the food, he is liable for the compensation, when it was due to his negligence<sup>44</sup>.

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<sup>42</sup>*The text (second)*. p. 47. However, the first version omits this.

<sup>43</sup>*The text (first)*. p. 105. However, the second version omits this.

<sup>44</sup>*The text (first)*. p. 105. However, the second version omits this.

Chapter Six: Legal decisions on a matter related to markets that are near to the city

Yaḥyā ibn ʿUmar was asked<sup>45</sup> about the market of Qaṣr<sup>46</sup>, whether it should follow the market of Qayrawān concerning the price of all kinds of goods, edible and non-edible, which are sold at its market. Yaḥyā ibn ʿUmar replied that he did not think so and he assumed that the market of Qaṣr was different from that of Qayrawān. Abū al-ʿAbbās ʿAbd Allāh ibn Ṭālib also mentioned the same thing as Yaḥyā ibn ʿUmar. However, Muḥammad ibn ʿAbdūs<sup>47</sup> disagreed and he maintained that it should follow the market of Qayrawān<sup>48</sup>.

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<sup>45</sup>According to the first version the question came from an unidentified person, whereas the second version held that it was asked by the transmitter Aḥmad al-Qusarī. *The text (first)*. p. 108. *The text (second)*. p. 47.

<sup>46</sup>A place in Tunisia about two miles from the city of Qayrawān. *Munjid*. p. 417. However, the first version referred to it as *miṣr* (Egypt). *The text (first)*. p. 108.

<sup>47</sup>See previous note on Muḥammad ibn ʿAbdūs, the famous jurist of Qayrawān and contemporary of Yaḥyā ibn ʿUmar. However, the first version referred to him as Muḥammad ibn ʿAbd Allāh, a Mālikī scholar in Egypt who died in 214 A.H. This seems to be not acceptable because neither Yaḥyā nor Aḥmad al-Qusarī had met him. See Ibn Farḥūn, *al-Dībāj*. p. 134.

<sup>48</sup>*The text (first)*. p. 108. *The text (second)*. pp. 47-8.

Chapter Seven: **Legal decisions on matters related to figs which are rubbed with oil (*madhūn bi al-zayt*) and milk when water was added to it<sup>49</sup>**

Yaḥyā ibn ʿUmar was asked <sup>50</sup> whether the vendors should be prevented from rubbing figs with oil. Yaḥyā replied that they should be prevented. Yaḥyā then was asked<sup>51</sup> about the legal action that should be carried out against those vendors who had been warned but continued to violate the law: whether a contract with them should be considered as void and a penalty should be inflicted on them. He also asked what happened to the purchaser who bought the figs when he knew of their adulterated condition. Yaḥyā ibn ʿUmar replied that the vendor should be prevented from such an act and if he had been warned but did not abstain himself from selling figs which are rubbed with oil, the figs should be donated to the poor as a penalty for him. Yaḥyā then said that the same rule applied to milk when water was added to it: it should be donated to the poor and not poured on the ground. Similarly, with bread which fell short of the standard

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<sup>49</sup>However, the first version included the discussion on milk when was added with water and bread insufficient in weight in a separate chapter. *The text (first)*. p. 106.

<sup>50</sup>According to the first version the question was derived from an unidentified person, whereas the second version held that it was asked by the transmitter Aḥmad al-Quṣārī. *The text (first)*. p. 109. *The text (second)*. p. 50.

<sup>51</sup>The first version maintained that the question was asked by an unidentified person, whereas the second seems to suggest that it came from the transmitter. Thus, we find the first version reads *qīla*, whereas the second *qultu*. *The text (first)*. p. 109. *The text (second)*. p. 51.

measure; the vendor should be warned and if he did not abstain himself from doing such an act, the bread would be donated to the poor and he would be banned from the market<sup>52</sup>.

Chapter Eight: Legal decisions on a matter related to sellers of grain (*ḥannāṭīn*)<sup>53</sup>

Yaḥyā ibn ʿUmar was asked<sup>54</sup> whether the sellers of grains should be prevented from selling wheat, barley, beans (*fūl*), lentils (*ʿadas*), chick-peas (*ḥimmiṣ* or *ḥimmaṣ*) and all kinds of *al-qaṭānī*<sup>55</sup> until they had been sieved. Yaḥyā ibn ʿUmar replied that the matter had been reported to him by al-Ḥārith ibn Miskīn from ʿAbd Allāh ibn Wahb from Mālik<sup>56</sup> saying that those things cannot be sold without being sieved. Yaḥyā ibn ʿUmar then said that he thought the sellers should be compelled to do so<sup>57</sup>.

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<sup>52</sup>*The text (first)*. p. 109. *The text (second)*. p. 52.

<sup>53</sup>*Lane*. 1:657. The first version included the discussion on milk when water was added to it and bread insufficient in weight in this chapter. *The text (first)*. p. 106.

<sup>54</sup>The first version held that the question was derived from an unidentified person, whereas the second seems to suggest that it was from the transmitter. Thus, we find the first version reads *suʿila*, and the second *saʿaltu*. *The text (first)*. p. 109. *The text (second)*. p. 48.

<sup>55</sup>Any kinds of pulse, or seed that are cooked. *Lane*. supp. 2991.

<sup>56</sup>However, the first version omits this *isnād*. *The text (second)*. p. 49.

<sup>57</sup>*The text (first)*. p. 109. *The text (second)*. pp. 48-9.

Chapter Nine: **Legal decisions on the sale of fruit in the market before it ripens**<sup>58</sup>

Yaḥyā ibn ʿUmar was asked <sup>59</sup> about figs, apples (*tuffāḥ*), grapes (*ʿinab*) and all kinds of fruit sold in the market before they ripened. Yaḥyā replied that if the fruit is abundant in the city, there is no harm in doing so, but if the fruit is scarce, the owner should be prevented from picking unripe fruits (*ḥiṣrim*), because it would bring harm to the public in general. This is because when in demand, the fruit will not be available, as a result the price will increase. Therefore, the owner in this situation should be prevented from picking unripe fruit<sup>60</sup>.

Yaḥyā ibn ʿUmar was asked<sup>61</sup> about the case of a man who bought a basket (*silāl*) of figs which are either of the winter (*shatwī*) or of the summer (*ṣayfī*) season, and later on when he took out the fruit from the basket, he found that some of the fruit was unripe, whether the contract has become void, and whether the purchaser has an option (*khiyār*) so that

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<sup>58</sup>See *Muwattaʿ*. (riw. *al-Suyūṭī*). 2:51. See also transl. A. Bewley. p. 251.

<sup>59</sup>The first version held that Yaḥyā was asked by an unidentified person, whereas the second version seems to suggest that the question was derived from the transmitter. Thus, we find the first version reads *su ʿila*, whereas the second *sa ʿaltu*. *The text (first)*. p. 110. *The text (second)*. p. 52.

<sup>60</sup>*The text (first)*. loc.cit. *The text (second)*. loc.cit.

<sup>61</sup>The first version held that he was asked by an unidentified person, whereas the second version maintained that it was from Aḥmad al-Quṣarī. Ibid.

he can keep the fruits if he wants or return them to the vendor. Yaḥyā ibn ʿUmar replied that if the purchaser bought the fruit on the day before, he has the option<sup>62</sup>.

Yaḥyā then was asked<sup>63</sup> whether the vendor who sold fruit some of which was unripe or had been rubbed with oil, should be warned not to sell such kinds of fruit in the market of the Muslims; and if he had been warned, what action should be taken with the unripe fruit, should it be donated to the poor, or should the vendor be warned in the first place that such an act is banned in the market of the Muslims. If he repeated his offence and begun to sell such kinds of fruits which had been banned, should he be detained (*ḥabs*), or what action can be taken against him. Yaḥyā replied that if the purchaser bought such kinds of fruits they should return them to the vendor and the selling of such fruit should be banned from the market of the Muslims. If the fruit sold are those which the vendor has been warned about, the fruit will be donated to the poor as a penalty for him<sup>64</sup>.

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<sup>62</sup>*The text (first)*. p. 110. *The text (second)*. p. 53.

<sup>63</sup>The question in the first version came from an unidentified person, whereas in the second version it seems to suggest that it was from Aḥmad al-Quṣarī. Thus, the first version reads *qāl*, but the second *qultu*. *The text (first)*. p. 110. *The text (second)*. p. 53.

<sup>64</sup>*The text (first)*. pp. 110-111. *The text (second)*. p. 54.



Chapter Ten: **Legal decisions on the sale of bread that contains stones (*ḥijārah*)**

Yaḥyā ibn ʿUmar was asked<sup>65</sup> about a man who bought a loaf of bread and he had eaten a bite (*luqmah*) or two of it, when he found that the bread had stones inside it, could the purchaser give back the rest of the bread to the vendor, and should he pay for what he had eaten and whether the vendor could return the bread to the baker who sold him the bread. Yaḥyā ibn ʿUmar said that the purchaser may return the remains of the bread to the vendor and he has to pay the amount for the part that he had eaten which contained stones, and the vendor will give him back the price that he had paid for the bread. The vendor then may take the bread to the baker and the baker should repay the vendor the amount that he had been paid, and the baker should be prevented from committing such an act<sup>66</sup>.

Yaḥyā ibn ʿUmar was asked<sup>67</sup> if the baker should be compelled to sieve the wheat and clean it from stones. Yaḥyā ibn ʿUmar agreed and he

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<sup>65</sup>The reading found in the first version was *suʿila*, whereas the second *saʿaltu*. *The text (first)*. p. 111. *The text (second)*. p. 54.

<sup>66</sup>*The text (first)*. p. 111. *The text (second)*. p. 55.

<sup>67</sup>The reading found in the first version was *suʿila*, whereas the second *saʿaltu*. Ibid.

emphasised that the baker should not be given any allowance on this matter<sup>68</sup>.

Yaḥyā ibn ʿUmar then was asked<sup>69</sup> about the bakers who are supplying the bread to the vendor which was found to have stones inside it, whether the bakers should be banned. He also was asked should the bread be donated to the poor as a penalty for the bakers and what would happen if they repeated the offence. Yaḥyā replied that the bakers should be warned not to sell bread that contained stones which came from the mill (*raḥan*). If a warning had been given and they continued to commit such an act, the bread would be donated as a penalty and they would be banned from making bread and selling it in the market for a period of time<sup>70</sup>.

#### Chapter Eleven: **Legal decisions on the sale of bread which was insufficient in weight**

Yaḥyā ibn ʿUmar was asked<sup>71</sup> about the bakers who had supplied the vendor with bread which is insufficient in weight, should the former be

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<sup>68</sup>*The text (first)*. p. 111. *The text (second)*. p. 56.

<sup>69</sup>The reading found in the first text was *su'ila*, whereas the second *sa'altu*. Ibid.

<sup>70</sup>*The text (first)*. p. 111. *The text (second)*. pp. 55-6.

<sup>71</sup>The reading of the first version was *su'ila*, whereas the second *sa'altu*. *The text (first)*. p. 111. *The text (second)*. p. 56.

punished for making bread insufficient in weight and is the bread to be destroyed. If the bread crumbled, can the vendor receive back the full payment from the baker. If he had returned the money, is the baker liable for punishment for making bread that was insufficient in weight and to be held responsible for the repayment of the price to the vendors. Yaḥyā replied that the baker should be punished and be banned from the market because he had committed a wrongful act which there was no reason for him to do<sup>72</sup>.

Aḥmad al-Quṣarī<sup>73</sup> was asked by a market supervisor (*ṣaḥīb al-sūq*) about the matter, so he replied that when he was with Ibn Marwān<sup>74</sup> who was a *qāḍī* at that time, Ibn Marwān was asked about the case of unleavened bread sold by the baker to the vendor. Ibn Marwān replied that if the vendor knew that the bread was unleavened before he bought it from the baker, the contract is binding and that the vendor would be responsible for the payment of damages when demanded by the purchaser<sup>75</sup> and both

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<sup>72</sup>*The text (first)*. p. 111. *The text (second)*. pp. 56-7.

<sup>73</sup>The text seems to suggest that this was the statement of Aḥmad al-Quṣarī, because Yaḥyā ibn ʿUmar had already died (d. 289 A.H.) when Ibn Marwān became a *qāḍī* in 290 A.H. *The text (second)*. p. 58. However, the first version has omitted this section. *The text (first)*. p. 111.

<sup>74</sup>Ḥamās ibn Marwān ibn Samāk al-Hamdānī (222-304 A.H.), who was the student of Saḥnūn born in Qayrawān. He became a *qāḍī* in 290 A.H. Al-Khushanī, *Quḍāt*. p. 153.

<sup>75</sup>Notice that the liability for the payment of the damage is now shifting from the baker to the vendor. *The text (second)*. p. 58.

the vendor and the baker were liable for punishment. The vendor should also be warned not to sell bread of such kind in the market<sup>76</sup>.

When Yaḥyā ibn ʿUmar was asked<sup>77</sup> who should be punished, the baker or the vendor, he replied that if the vendor knew that the bread was insufficient in weight or was unleavened before he purchased it from the baker, both of them were liable for punishment<sup>78</sup>.

## Chapter Twelve: A legal decision on bakers who had mixed wheat of good quality with a lesser

Yaḥyā ibn ʿUmar was asked<sup>79</sup> whether it is necessary for the baker to be compelled not to mix wheat of good quality with that of a lesser and what action should be taken against him if he had been warned, but did not abstain from it and was found doing such an act. Yaḥyā replied that if a

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<sup>76</sup>The text (second). p. 58.

<sup>77</sup>The first version held Yaḥyā was asked by unknown person (*qīla lahu*), whereas the second version indicated that the question was derived from the transmitter, Aḥmad al-Quṣarī (*qultu li Yaḥyā*). *The text (first)*. p. 111. *The text (second)*. p. 58.

<sup>78</sup>*The text (first)*. p. 111. *The text (second)*. pp. 58-9.

<sup>79</sup>The first version held that the question was asked by unknown person (*wa suʿila ʿan*), whereas the second version indicated that it was derived from the transmitter (*wa saʿaltu Yaḥyā ibn ʿUmar*). *The text (first)*. p. 112. *The text (second)*. p. 59.

warning had been given to him and he continued to mix them, he should be punished and be banned from the market<sup>80</sup>.

Chapter Thirteen: **Legal decisions on a miller<sup>81</sup> who ground wheat together with remnants found in the grinder (*miṭḥanah*)**

Yahyā ibn ʿUmar was asked<sup>82</sup> whether the miller is allowed to grind wheat in a grinder containing remnants and what would happen if the public had employed him to do the job, should he be held responsible for replacing them with other wheat or a similar one. Yahyā replied that he should be punished and is liable to compensate for the damage by replacing the same value of wheat. This had been reported to him by ʿUbayd ibn Muʿāwiyah from Aṣḥab ibn al-Faraj<sup>83</sup>, he said that he had heard Ashhab ibn ʿAbd al-ʿAzīz being asked the same thing, to which he replied that the miller is liable for the damages and he should be responsible for replacing wheat of a similar kind to the owner. However, Aṣḥab argued that if the

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<sup>80</sup>*The text (first)*. p. 112. *The text (second)*. p. 59.

<sup>81</sup>It seems that the reading found in the first version is more acceptable because the second version indicated that he was a baker (*aṣḥab al-faran*) not a miller (*aṣḥāb al-raḥan*). *The text (first)*. p. 112. *The text (second)*. p. 59.

<sup>82</sup>The second version indicated that Yahyā was asked by the transmitter Aḥmad al-Quṣarī, in contrast to the first version. *The text (first)*. p. 112. *The text (second)*. p. 59.

<sup>83</sup>However, the first version omits the name ʿUbayd ibn Muʿāwiyah. *The text (second)*. p. 60.



owner of the wheat knew of the damage and he approved of it, the baker is therefore not liable for it<sup>84</sup>.

**Chapter Fourteen: Legal decisions on vendors who falsify the measures, cheating in food sold and other related matters**

Aḥmad al-Quṣarī related from Yaḥyā ibn ʿUmar from al-Ḥārith ibn Miskīn from Ibn Wahb, in which he said that he heard Mālik ibn Anas<sup>85</sup> was asked about a vendor who had attached pitch (*ziḥḥ*) to his measures so that they weighed more, even though the quantity of goods involved was small. Mālik then said that the vendors who have adulterated their goods should only be banned from the market. In this case, the beating is not approved by Mālik. However, Yaḥyā considered that the ban was more severe than the beating<sup>86</sup>.

Yaḥyā ibn ʿUmar related to Aḥmad al-Quṣarī that he heard from al-Ḥārith ibn Miskīn who reported from Ibn Wahb from Mālik<sup>87</sup> that he had

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<sup>84</sup>*The text (first)*. p. 112. *The text (second)*. pp. 59-60.

<sup>85</sup>This is the reading of the second version. However, the first version only referred to the opinion of Ashhab, which was narrated by Yaḥyā from ʿUbayd ibn Muʿāwiyah from Aṣḥab ibn al-Faraj. *The text (first)*. p. 112. *The text (second)*. p. 60.

<sup>86</sup>This sentence is omitted in the second version. *The text (first)*. p. 112-3. However, on another occasion, the second version also agreed that the ban is more severe than the beating. See *The text (second)*. p. 70. See p. 110 below.

<sup>87</sup>This is omitted by the first version. Instead, the text mentioned the name Mālik only. *The text (second)*. p. 60.



said more than once that he disapproved (*makrūh*) of a vendor selling unripe dates (*busr*) together with those which are ripe to obtain an immediate higher price. Yaḥyā ibn ʿUmar then said that the same applied to figs which had been rubbed with oil<sup>88</sup>.

Yaḥyā ibn ʿUmar related to Aḥmad al-Quṣarī that al-Ḥārith reported from<sup>89</sup> Ibn Wahb that he heard Mālik<sup>90</sup> on being asked about a vendor who mixed food with that of different varieties, replying that he disliked the act of mixing food of different kinds while the price was the same. Ibn Wahb then said that Mālik was asked about a man who mixed the food of good quality with that of a lesser one<sup>91</sup>. Mālik replied that, in fact, he should give away the food of good quality because this will harm the food. God said: "... You should not aim at getting anything which is bad, out of it you may give away something ..."<sup>92</sup>, while the vendor might think that this would bring him profit, in fact it would destroy his religion. Mālik maintained that it was necessary for that person to be punished so that he

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<sup>88</sup>*The text (first)*. p. 113. *The text (second)*. p. 61.

<sup>89</sup>The text reads *al-Ḥārith ibn Wahb*, which is incorrect. It should read as *al-Ḥārith ʿan Ibn Wahb*. *The text (second)*. p. 61.

<sup>90</sup>*The text (second)*. p. 61. However, the first version omits this. *The text (first)*. p. 113.

<sup>91</sup>This sentence and remaining part of this paragraph is omitted in the first version. *The text (first)*. p. 113.

<sup>92</sup>*Al-Qurʾān*. 2:267.

would not repeat such an act because the sale was considered an uncertain transaction (*gharar*)<sup>93</sup>.

Aḥmad al-Quṣarī asked Yaḥyā what kinds of food were not allowed to be mixed and should the sale conducted by the vendor who mixed and sold the food be considered void and should he be punished. Yaḥyā replied that the vendor should not sell food which was a mixture of good and lesser quality, and when he had been warned he should be banned from the market and only be allowed to sell food when his repentance was obvious<sup>94</sup>.

Yaḥyā ibn ʿUmar reported to Aḥmad al-Quṣarī that al-Ḥārith ibn Miskīn had narrated from Ibn Wahb that he heard Mālik ibn Anas<sup>95</sup> asked about whether when the vendor who was selling milk mixed with water, the milk should be poured away. Mālik replied that someone might pour away the milk, but he preferred it to be given to the poor. They then asked Mālik should it be given away without any charges. Mālik agreed if he was the person who adulterated the milk. According to Yaḥyā, this was transmitted by Ashbab from Mālik and it is acceptable to him. Someone

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<sup>93</sup>*The text (second)*. pp. 61-2.

<sup>94</sup>*The text (second)*. p. 62.

<sup>95</sup>The *isnād* is omitted by the first version. Instead, reference to Mālik was made by mentioning his name only. *The text (first)*. p. 113. *The text (second)*. p. 62.

asked Mālik whether adulterated saffron (*za<sup>c</sup>farān*) and musk were to be treated the same as adulterated milk. Mālik replied that their treatment would be the same if the vendor was the person who had adulterated the saffron and the musk, but if they were bought from another person who had adulterated them, no legal action could be taken against the vendor because that would be considered as stealing other people's property. Aḥmad al-Quṣarī then asked Yaḥyā<sup>96</sup> whether the adulterated substance should be taken away from the vendor entirely. Yaḥyā agreed<sup>97</sup>.

**Chapter Fifteen: Legal decisions on the practice of mixing cow's milk with that of goats (*ghanam*)**

Aḥmad al-Quṣarī reported that Yaḥyā ibn ʿUmar had narrated from al-Ḥārith ibn Miskīn from Ashhab ibn ʿAbd al-ʿAzīz that he had asked Mālik<sup>98</sup> about cow's milk which had been mixed with that of goats. Mālik replied that the vendor should inform the purchaser of the matter. Ashhab then asked Mālik whether the vendor should inform the purchaser about

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<sup>96</sup>This is the reading of the second version. However, the first version held that Yaḥyā was asked by an unknown person. *The text (first)*. p. 113. *The text (second)*. p. 63. However, Ibn al-Mājishūn disagrees and he is against confiscating the goods except when the value is nominal such as a amount of bread or milk. See pp. 128-9 above.

<sup>97</sup>*The text (first)*. p. 113. *The text (second)*. p. 63.

<sup>98</sup>This is the reading of the second version, whereas the first version only mentioned that Mālik was asked by Ashhab on the matter. *The text (first)*. p. 113. *The text (second)*. pp. 63-4.

the fresh butter (*zubd*) and clarified butter (*samn*)<sup>99</sup> produced from the milk which had been mixed. Mālik agreed, but he preferred that the milk should not be mixed. Thus, the vendor will be punished for not informing the purchaser<sup>100</sup>.

Yaḥyā then was asked if the contract should be considered void and the food be donated as a penalty for the vendor who had been warned but continued to mix fresh butter (*zubd*) made from cow's milk with that of goats, or when their milk were mixed and sold in the market and the vendor did not inform the purchaser of this condition. He agreed because the vendor had cheated the purchaser when he had been warned not to do so. Therefore, the food would be donated to the poor as a penalty. This is because such an act is considered as cheating which was prohibited by the tradition of the Prophet in which he said; "He who cheats us is not one of us"<sup>101</sup>.

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<sup>99</sup>Butter can be clarified in various ways, such as by boiling, cooking or mixing it with a substance called *sawīq*. *Lane*. 1:1432.

<sup>100</sup>*The text (first)*. p. 113. *The text (second)*. pp. 63-4.

<sup>101</sup>However, the tradition is omitted by the second version. *The text (first)*. p. 114. *The text (second)*. p. 65. See p. 3 above.

Chapter Sixteen: **A legal decision on the sale of bitter cucumbers**  
**(qiththā')**

Mālik held that he did not understand why some of the purchasers wanted to return the cucumber to the vendor, which they had found to taste bitter. However, according to Ashhab, if the sale involved only one or two cucumbers, the purchaser may return them to the vendor when they are bitter. In the case where the sale involved large amount of cucumbers, Ashhab considered that the purchasers may not return the cucumber, except when all or most of them had become defective in taste<sup>102</sup>.

Chapter Seventeen: **Legal decisions on the sale of honey of good quality which had been mixed with that of a lesser and other related matters**

Aḥmad al-Quṣarī related from Yaḥyā ibn ʿUmar who had narrated from al-Ḥārith ibn Miskīn from Ibn Wahb that he had heard Mālik<sup>103</sup> being asked about a man who mixed honey of good quality with that of bad one and sold it in the market. Mālik replied that the sale was considered

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<sup>102</sup>The whole discussion is omitted by the text of the second version. It should be noted here that Yaḥyā had not been referred to in this matter. Presumably, this was added to the text by the transmitter. *The text (first)*. p. 114.

<sup>103</sup>This is the reading in the second version. The first version, however has omitted the name al-Ḥārith ibn Miskīn and indicated that the matter was reported by Ibn Wahb who heard it from Mālik. *The text (first)*. p. 114. *The text (second)*. pp. 65-6.



as a kind of cheating (*ghashsh*) because he had mixed the good quality with that of a lesser. Mālik then said that the same applied to butter and oil, except when they are for his own use. Mālik was asked about a man who had mixed them for one's own use, but later decided to sell them. Mālik replied that such an act was not permissible. Aḥmad al-Quṣarī asked Yaḥyā ibn ʿUmar<sup>104</sup> whether he agreed with all of these statements. Yaḥyā replied that he agreed with them<sup>105</sup>. Concerning the sale of eggs, the purchasers are entitled to return them to the vendors when they were found to be spoiled<sup>106</sup>.

#### Chapter Eighteen: **A legal decision on a matter related to mixing old oil with new**

Yaḥyā ibn ʿUmar was asked <sup>107</sup> about the practice of some of the vendors who had mixed old oil with the new and sold it in the market, whether the sale was permissible or should they be banned from doing so.

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<sup>104</sup>This is found in the second version, whereas the first version held that Yaḥyā was asked by an unknown person. *The text (first)*. p. 114. *The text (second)*. p. 66.

<sup>105</sup>*The text (first)*. p. 114. *The text (second)*. p. 66.

<sup>106</sup>The second version omits this. It should be noted here that the text did not indicate that Yaḥyā or any other jurists were asked on the matter. Thus, it seems probable that it was added to the text by the transmitter. Furthermore, the second version did not mention this. *The text (first)*. p. 115.

<sup>107</sup>The first version held that the question was asked by an unidentified person, whereas the second version maintained that it was derived from the transmitter, Aḥmad al-Quṣarī. Thus, we find the first version reads *qīla lahu*, whereas the words *qultu li Yaḥyā ibn ʿUmar* was found in the second version. *The text (first)*. p. 115. *The text (second)*. p. 66.



If they had been warned but then admitted to committing such an act, should the sale be considered void and the oil be donated, and would the purchaser have a right for an option (*khiyār*) either to keep the goods or return them if he wanted to, or should the vendors be warned first because they might argue that they had no knowledge of the ban ? Yaḥyā replied that if the quality of the new oil and the old were the same, the matter was easy and the vendor should inform the purchaser of that. Therefore if he sold the mixed oil without informing the purchaser, the latter had an option (*khiyār*) either of keeping or returning the oil. In the case where he had mixed the oils which were of different qualities, then it was a kind of cheating which was not permitted. If they claimed to have no knowledge, like the nomadic people (*badawī*), they should be given a warning that the sale was not permitted in the market of the Muslims. If they repeated the offence, they should be punished and the goods be donated to the poor<sup>108</sup>.

**Chapter Nineteen: Legal decisions on matters related to mixing the goods and action to be taken against butchers and others who practised such an act**

Yaḥyā ibn ʿUmar reported to Aḥmad al-Quṣarī that he heard from ʿUbayd ibn Muʿāwiyah from Aṣbagh ibn al-Faraj that he asked Ibn al-

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<sup>108</sup>*The text (first)*. p. 115. *The text (second)*. pp. 66-7.

Qāsim<sup>109</sup> about the butcher who had mixed fleshy meat (*samīn*) with that which had less meat (*mahzūl*) and sold them together at the same weight and price. Even though the purchasers were able to distinguish the fleshy and the fleshless meat, but they did not know the actual weight for both of them. Ibn al-Qāsim replied that such a case is permissible if the difference in weights for these two meats is small, like five and six *arṭāl*, as in the case of someone buying from the slaughter-house (*majāzir*) with the difference of one *dirham* or two. But if the difference involves twenty and thirty *arṭāl* and the like, then there is no benefit in doing so. Thus, it was necessary for the purchaser to be informed of the weights of each of kinds of meat, because failing to do so would cause the sale to be considered as an uncertain transaction (*gharar*) which has no benefit. Ibn al-Qāsim maintained that the matter was also a kind of cheating which was not permitted<sup>110</sup>.

Aṣḡagh then asked Ibn al-Qāsim whether it was permitted for the vendor to mix the oil, butter and wheat of bad quality with that of good one. Ibn al-Qāsim replied that such an act is not permissible for there is no benefit in doing so and he did not understand why he was asked this kind of question. Ibn al-Qāsim then mentioned that Mālik once told him about

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<sup>109</sup>This *isnād* is found in the text of the second version. However, the first version has omitted this and indicated that Ibn al-Qāsim was asked by an unknown person. *The text (first)*. p. 115. *The text (second)*. 68.

<sup>110</sup>*The text (first)*. p. 116. *The text (second)*. p. 69.

the same thing in which he said: "Up to now you still ask me this kind of question !" <sup>111</sup>. Aḥmad al-Quṣarī asked Yaḥyā ibn ʿUmar whether he agreed with these statements. Yaḥyā admitted that he accepted them <sup>112</sup>.

Aḥmad al-Quṣarī asked Yaḥyā ibn ʿUmar whether a sale, which involved someone who was unaware of the condition of the mixed meats as was mentioned by Aṣbagh and Ibn al-Qāsim, should be considered as void and whether he could return the meat to the vendor. In this case should the vendor be punished before a warning was given to him and the meat be donated to the poor entirely based on his first offence <sup>113</sup>?

Yaḥyā replied that when a purchaser bought the meat and he was unaware that it had been mixed by the vendor, he had the right to return the meat to the vendor and receive repayment from him, and the vendor had to be warned not to conduct such a kind of sale. If the vendor was given a warning but he did not abstain from it, he would be banned from the market. This is, in fact, more severe than a beating <sup>114</sup>. If he committed the offence for a second time, he would be punished and driven to the

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<sup>111</sup>*The text (first)*. p. 116. *The text (second)*. p. 69.

<sup>112</sup>This is found in the second version. However, the text of the first version has omitted this statement. *The text (first)*. p. 116. *The text (second)*. p. 69.

<sup>113</sup>This section is omitted by the first version. *The text (first)*. p. 116. *The text (second)*. pp. 69-70.

<sup>114</sup>See p. 101 above.

market where he would be paraded and be banned from the market after that. If such actions were to be taken against him, it would frighten others from committing the same offence. The offender would also be banned from selling those goods, so as to deter others from doing the same thing, since such acts supposedly should have not happened in the market of the Muslims in the first place<sup>115</sup>.

## Chapter Twenty: **A legal decision on a matter related to blowing into carcasses**

Yaḥyā ibn ʿUmar was asked<sup>116</sup> about the action to be taken against a butcher, should he be prevented from slicing (*sharaḥa*)<sup>117</sup> and blowing (*nafakha*) into the carcasses<sup>118</sup>. If he had blown and sliced the meat, should he be warned first ? If he repeated the offence for the second time, what action should be taken against him, should he be detained, and should he be banned from the market if he repeatedly committed the

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<sup>115</sup>*The text (second)*. loc.cit.

<sup>116</sup>The first version indicated that Yaḥyā was asked by an unknown person, whereas the second version held that it was derived from the transmitter. *The text (first)*. p. 116. *The text (second)*. p. 70.

<sup>117</sup>This is omitted by the first version. *The text (first)*. p. 116. *The text (second)*. p. 70.

<sup>118</sup>According to Ibn ʿAbd al-Raʿūf, the butchers should be prevented from blowing into the carcasses, because a purchaser who was unaware of this might be thinking that it has plenty of meat. Ibn ʿAbd al-Raʿūf, *Risālah*. p. 94. Meanwhile, al-Saqāṭī regards that such an act is unhealthy because a person who is suffering from halitosis might corrupt the meat. Al-Saqāṭī, *al-Ḥisbah*. p. 32.

offence, and is he allowed to mix sheep's (*qā'n*) meat with that of goat (*ma'iz*) for the purpose of selling them ?

Yaḥyā replied by referring to the opinion of the learned people that it was a disapproved act (*makrūh*) to blow into carcasses. Thus, he should be vigorously prevented from such an act. If he repeated the offence, he should be banned from the market. Yaḥyā maintained that the meat of sheep and goat should be separated and be sold separately according to their prices.

Yaḥyā ibn ʿUmar related to Aḥmad al-Quṣarī that he heard from al-Ḥārith ibn Miskīn from Ibn Wahb that he had heard Mālik<sup>119</sup> being asked about a man who blown into carcasses as in the case of the butcher, and he replied that he disapproved of such an act and the person should be prevented from doing so<sup>120</sup>.

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<sup>119</sup>This is the reading of the second version. However, the first version omitted Yaḥyā's teacher al-Ḥārith ibn Miskīn from the *isnād*. *The text (first)*. p. 117. *The text (second)*. p. 71.

<sup>120</sup>*The text (first)*. p. 117. *The text (second)*. p. 71.



**Chapter Twenty One: A legal decision on a matter related to the butchers and the green-grocers (*baqqālīn*) who were exclusively permitted to sell their goods**

Yahyā ibn ʿUmar was asked<sup>121</sup> about the case of a butcher and a green-grocer who were exclusively permitted to sell their goods for a day or two, whilst the rest of the vendors were not allowed to sell them during that time. This in fact was an act of courtesy (*rifq*) for that particular vendor who had no money or<sup>122</sup> when he wanted to get married<sup>123</sup>, so that he could gain more profit since other vendors had abstained from the sales, whether this was permissible when the price remained the same, or was it not because if they were to allow him, that particular vendor would be the only person to sell the meat, and the market would be without meat except for what he had with him and a further demand of meat or vegetable could be met.

Yahyā replied that when the market had been exclusively made for such a person, it was not permissible if it caused inconveniences to the public in general. However, if the price remained the same and the public

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<sup>121</sup>The first version held that he was asked by an unknown person (*wa su'ila*), whereas the second version maintained that it was derived from the transmitter Aḥmad al-Quṣarī (*wa sa'altu Yahyā*). *The text (first)*. p. 117. *The text (second)*. p. 71.

<sup>122</sup>This is the reading of the second version, whereas the first version held that it was "and" (*wa*) instead of "or" (*aw*). *The text (first)*. Ibid. *The text (second)*. p. 72.

<sup>123</sup>The next sentence until the end of the question is omitted by the first version. Ibid.



did not feel any inconveniences, then it was up to the vendors to decide<sup>124</sup>.

**Chapter Twenty Two: A legal decision on the sale of tops (*duwwāmāt*) and dolls (*ṣuwar*)**

Yaḥyā ibn ʿUmar was asked<sup>125</sup> about the sale of tops and dolls for children. He replied that Mālik was asked about the sale of figures made from bone so that the children could play with them. Mālik replied that there was no benefit in them<sup>126</sup>.

**Chapter Twenty Three: Legal decisions on the sale of unripe dates (*ruṭab*) soaked in liquid (*ghamura*)**

Yaḥyā reported to an audience and one of them was Aḥmad al-Quṣarī, that he heard al-Ḥārith ibn Miskīn reporting from Ibn Wahb, he said that he had heard Mālik was speaking to a market supervisor (*ṣāḥib al-sūq*) requesting him to prohibit the sale of unripe dates soaked in liquid

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<sup>124</sup>The first version provides a different account of the opinion of Yaḥyā. Instead of saying that the matter is to be decided by the vendors, it holds that Yaḥyā did not disapprove of such an act. *The text (first)*. p. 117. *The text (second)*. p. 72.

<sup>125</sup>The two texts have indicated that the question was asked by an unidentified person. Thus, we find the first version reads *masʿalah* and the second *wa suʿila*. *The text (first)*. p. 117. *The text (second)*. p. 83.

<sup>126</sup>*The text (first)*. p. 117-8. *The text (second)*. pp. 83-4. However, see pp. 237-9 below.

because it was harmful to the stomach and that the offender should be punished. The same applied to melons and all kind of fruit sold at the market that they should not be sold until they were ripe<sup>127</sup>.

On another occasion, Yaḥyā reported to an audience and one of them was Aḥmad al-Quṣarī that he heard al-Ḥārith ibn Miskīn reporting from Ibn Wahb from Mālik<sup>128</sup> that it was allowed to soak unripe dates in vinegar so that they would become moistened, as long as they were not harmful when eaten. However, Yaḥyā argued that he had heard another opinion of Mālik that it was harmful to eat unripe dates soaked in vinegar. According to Yaḥyā, the case is different from the sale of clothes that had shrunk, because it was not harmful to the person who wore them<sup>129</sup>.

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<sup>127</sup>The first version omits this. *The text (second)*. p. 73.

<sup>128</sup>This is the reading of the second version. The first version, however, had only referred to the statement of Ibn Wahb who narrated it from Mālik. *The text (first)*. p. 118. *The text (second)*. p. 73.

<sup>129</sup>Although, the first version had omitted this statement of Yaḥyā, in fact, it had indicated another opinion of Yaḥyā that the sale of shrunken clothes must be different from the sale of unripe dates. This is also found in the second version. See next chapter. *The text (first)*. p. 118. *The text (second)*. pp. 73-4.

## Chapter Twenty Four: **Legal decisions on the sale of shrunken clothes**

According to Mālik<sup>130</sup> in the case of the sale of shrunken clothes after they had been worn, he maintained that the sale is binding as long as the vendor has informed the purchaser of the defect. Yaḥyā disagreed on the matter and considered that the case must be different from the sale of unripe dates soaked in vinegar, because it is harmful when eaten<sup>131</sup>. In the case of shrunken clothes, the vendor should inform the purchaser of the defect because failing to do so would result in the contract becoming void and the offender could be banned from the market.

## Chapter Twenty Five: **Action taken against missing vendors**

Aḥmad al-Quṣarī reported to Yaḥyā<sup>132</sup> that a written petition was made to qāḍī Ibn Ṭālib regarding the butchers who were selling meat by mixing fleshy meat with that having less meat and the meat of sheep with that of goats. The petition also asked the qāḍī about the case of a baker who was selling bread which fell short of the standard measure. In these cases, the butchers and the bakers would run away each time the market

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<sup>130</sup>This chapter is, in fact, a continuation from the previous discussion on the sale of unripe dates. *The text (first)*. p. 118. *The text (second)*. p. 74-5.

<sup>131</sup>*The text (first)*. p. 118. *The text (second)*. p. 74.

<sup>132</sup>This is the reading found in the second version, whereas the first had indicated that it was a question (*mas'alah*). *The text (first)*. p. 118. *The text (second)*. p. 75.

supervisor came to inspect them and leave behind them the meat and the bread. The petition then asked the *qāḍī* what action should be taken against them and their goods. The *qāḍī* replied that their shops will be locked and the market supervisor is allowed to sell the meat and bread if he feared that they would become spoiled and the money he raised would be given to the treasury. When asked by Aḥmad al-Quṣarī, Yaḥyā replied that he agreed with the opinion of the *qāḍī* Ibn Ṭālib<sup>133</sup>.

**Chapter Twenty Six: Legal decisions on matters that are disapproved during a wedding banquet (*walīmah*)**

Yaḥyā ibn ʿUmar was asked <sup>134</sup> about the case of a man who was invited to a party where musical instruments would be played and wines served, whether he was liable to accept such an invitation. Yaḥyā replied that a person was only required to accept an invitation to a wedding. However, he was not obliged to attend a wedding banquet where music was played, except for certain instruments like *mizhar*<sup>135</sup> and *kabar* (drum)<sup>136</sup>. As for other instruments like *būq* (trumpet), *ṭunbūr* (a

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<sup>133</sup>*The text (first)*. p. 118-9. *The text (second)*. pp. 75-6.

<sup>134</sup>The first version indicated that he was asked by an unknown person (*wa suʿila*), whereas the second version held that the question was derived from the transmitter (*wa saʿaltu* Yaḥyā). *The text (first)*. p. 119. *The text (second)*. p. 76.

<sup>135</sup>A kind of tambourine (*duff*). See p. 236 below.

<sup>136</sup>Also known as *tabl*. See next paragraph.

stringed instrument like a mandolin) and <sup>ʿ</sup>*ūd* (lute), they are not allowed and if played during a wedding banquet, a person was not compelled to accept such an invitation.

According to Yaḥyā, the reason for permitting the playing of musical instruments during the marriage banquet is to proclaim and make known the marriage (*nikāḥ*) in order to differentiate it from a fornication (*sifāḥ*). In relation to this, Ibn al-Qāsim when asked by Aṣḥabḥ ibn al-Faraj about the matter, replied that a person was allowed to attend a banquet (*ṣanīʿ*) where tambourine (*duff*) and drum (*kabar*) were played. The same was the opinion of Mālik. Aṣḥabḥ then reported a tradition of the Prophet in which he said: "Proclaim the marriage and beat *ghirbāl*"<sup>137</sup>. Aṣḥabḥ held that *mizhar* was also allowed because it was a kind of tambourine (*duff*). This was mentioned to him by Ibn Wahb from al-Layth ibn Saʿd<sup>138</sup>, who said that ʿUmar ibn ʿAbd al-ʿAzīz had ordered musical instruments to be destroyed except for the tambourine which was played during the wedding ceremony. Yaḥyā maintained that he agreed with this decision.

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<sup>137</sup>According to Yaḥyā it was a circular tambourine (*duff mudawwar*). *The text (first)*. p. 121. *The text (second)*. p. 78.

<sup>138</sup>The two texts read al-Layth ibn Saʿd which was incorrect. He should be referred to al-Layth ibn Saʿd who was the teacher of Ibn al-Qāsim, Ibn Wahb and Ashhab in Egypt. He died in 175 A.H. Ibn Khallikhān, *Wafayāt al-Aʿyān*. 1: 554.



According to Mālik someone who was walking in a street where music was played should not use the street if he feared that he might be tempted to listen to it.

According to Yaḥyā, a man is not obliged to accept an invitation to a banquet where wine is served.

Aḥmad al-Quṣarī reported that Ibn Wahb narrated a tradition of the Prophet in which he told to his Companions to make a wedding (*nikāḥ*) known in order to distinguish it from fornication (*sifāḥ*) and such can be achieved by playing the tambourine and burning incense. Similarly, ʿUmar ibn ʿAbd al-ʿAzīz wrote a letter to Ayyūb ibn Sharaḥbīl instructing him to order his people to play the tambourine during the wedding banquet in order to distinguish it from fornication. The same was the opinion of Rabīʿah ibn Abī ʿAbd al-Raḥmān <sup>139</sup> to make a marriage known by playing musical instruments was a practice agreed upon by the Muslims<sup>140</sup>.

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<sup>139</sup>He was one of the distinguished Successors (*tābiʿūn*) and had studied with Anas ibn Mālik. He was the teacher to Mālik ibn Anas. He died in 136 A.H. Al-Nawawī, *al-Tahdhīb*. 1: 189-190.

<sup>140</sup>*The text (first)*. pp. 119-122. *The text (second)*. pp. 76-83.



Chapter Twenty Seven: **A legal decision on matter related to cooking pots (*qudūr*) used in making a fermented fruit juice (*nabīdh*)**

Aḥmad al-Quṣarī reported to Yaḥyā<sup>141</sup> that a written petition was made to *qāḍī* Ibn Ṭālib regarding whether the cooking pots, which were exclusively used for the making of *nabīdh*, should be destroyed or not. The *qāḍī* replied that if the pots cannot be used for other purposes, they should be destroyed and turned into copper, as in the case of a trumpet (*būq*). The market supervisor should prohibit the person who produced and purchased the drink. Yaḥyā, when asked<sup>142</sup>, maintained that he agreed with the *qāḍī*'s statements<sup>143</sup>.

Chapter Twenty Eight: **Legal decisions on the use of public baths**

Yaḥyā ibn ʿUmar was asked<sup>144</sup> on action to be taken against the bath owners when women who were not sick or had not given birth had entered their baths. He replied that in this matter, the bath-owner had to

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<sup>141</sup>This is omitted by the first version. *The text (first)*. p. 123. *The text (second)*. p. 85.

<sup>142</sup>The first version held that he was asked by an unknown person, whereas the second maintained that the question was derived from Aḥmad al-Quṣarī. *The text (first)*. p. 123. *The text (second)*. p. 86.

<sup>143</sup>*The text (first)*. p. 123. *The text (second)*. pp. 85-86.

<sup>144</sup>The first version indicated that he was asked by an unknown person, whereas the second held that it was derived from the transmitter, Aḥmad al-Quṣarī. *The text (first)*. p. 123. *The text (second)*. p. 86.

be informed that such an act was not permissible. Thus, the public authorities could then consider appropriate penalties to be inflicted on the bath owners after a warning had been given to them. Similarly, they must ensure that men had covered themselves in the bath. Yaḥyā recorded that the same opinion was given by *qāḍī* Ibn Ṭālib and he emphasised that men who do not cover themselves in the baths should be punished and their testimony (*shahādah*) should not be accepted until they had repented. The *qāḍī* also maintained that the bath attendants (*mutaqabbil al-ḥammām*) should be informed about the matter and would then be liable for punishment if they ignored the rule<sup>145</sup>.

#### Chapter Twenty Nine: **Legal decision on crying aloud over the death of a relative**

Yaḥyā, when was asked by Aḥmad al-Quṣarī<sup>146</sup> regarding the crying aloud over the death of a relative, replied that loud lamentation over the death of a relative is a disapproved act. The disapproval applies whether it was accompanied by the mourners (*nawwāḥ*) or not. However, it is allowed to weep quietly, because ʿUmar ibn al-Khaṭṭāb did not

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<sup>145</sup>*The text (first)*. pp. 123-4. *The text (second)*. pp. 86-9.

<sup>146</sup>This is the reading of the second version. However, the first version omits this and indicated that Yaḥyā was asked by an unknown person. *The text (first)*. p. 124. *The text (second)*. p. 89.

disapprove of women who were weeping over the death of Khālīd ibn al-Walīd<sup>147</sup>.

### Chapter Thirty: A legal decision on women visiting graves

Yahyā ibn ʿUmar was asked<sup>148</sup> about women who visited the graves of their relatives every Friday and lamented over their death. Yahyā replied that there were no grounds for them to visit the graves and ask for God's mercy upon their deceased relatives<sup>149</sup>.

### Chapter Thirty One: A legal decision on women who were wearing shoes that make noises

Aḥmad al-Quṣarī asked Yahyā ibn ʿUmar<sup>150</sup> about the shoemakers who were making shoes for women that produced noises which would attract men. Yahyā replied that the shoemakers must be prohibited from making such kind of shoes and if a warning had been given and he did not

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<sup>147</sup>*The text (first)*. pp. 124-5. *The text (second)*. pp. 89-91.

<sup>148</sup>The second version held that he was asked by the transmitter, Aḥmad al-Quṣarī, whereas the first version indicated that it was derived from an unknown person. *The text (first)*. p. 125. *The text (second)*. p. 91.

<sup>149</sup>*The text (first)*. p. 125. *The text (second)*. pp. 91-2.

<sup>150</sup>This is the reading of the second version. However, the first omits this and holds that he was asked by an unknown person. *The text (first)*. p. 126. *The text (second)*. p. 93.

abstain from it than he was liable for a punishment. Similarly, the women must be prohibited from wearing them<sup>151</sup>.

**Chapter Thirty Two: A legal decision on the act of spilling water in front the house and the shops and the responsibility of cleaning the market place**

Yaḥyā reproted that Ibn al-Qāsim was asked<sup>152</sup> about a vendor who sprinkled water in front of his shop where a person or an animal might fall and hurt themselves. Ibn al-Qāsim replied that if it was a small quantity of water, no legal action could be taken against him, but if it was a lot he thought that the vendor might be liable to pay for compensation<sup>153</sup>.

Yaḥyā was asked by someone whether the vendors were responsible for cleaning the mud caused by rains that has accumulated in the market area. Yaḥyā replied that he did not think so because that was not their

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<sup>151</sup>*The text (first)*. p. 125. *The text (second)*. pp. 93-4.

<sup>152</sup>According to the text of the second version, Yaḥyā had related the statement of Ibn al-Qāsim from Muḥammad ibn Abī al-Rajā' from Muḥammad ibn Sa'īd from Aḥmad ibn Akhī Abī Zayd from Abū Zayd ibn Abī al-Ghamar. However, this method of *isnād* is not found in the text of the first version. *The text (first)*. p. 126. *The text (second)*. p. 94.

<sup>153</sup>*The text (first)*. p. 126. *The text (second)*. pp. 94-5.



responsibility. However, if the vendors were the persons responsible for accumulation of dirt in the market area, they should clean it up<sup>154</sup>.

**Chapter Thirty Three: Legal decisions on a door of a house in a narrow lane and on the liability of the person who dug a pit**

Yahyā, when asked by Aḥmad al-Quṣarī<sup>155</sup>, maintained that it was not permissible to make a door to a house which is situated in a narrow lane (*zuqāq*) and where a neighbour's house was on the opposite side. However, he is allowed to do so if the lane is wide, as long as it does not cause inconveniences to others<sup>156</sup>. Yahyā was asked by someone concerning the case of a person who had dug a pit to bury his stock of crop, but had caused injury to other people's cattle which had fallen inside it. Yahyā replied that the person will not be held responsible for that. However, as for someone who dug a pit to capture a burglar, he is liable when it had injured other persons<sup>157</sup>.

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<sup>154</sup>*The text (first)*. p. 126-7. *The text (second)*. p. 95.

<sup>155</sup>This is the reading found in the second version. However, the first version omits this. *The text (first)*. p. 127. *The text (second)*. p. 98.

<sup>156</sup>*The text (first)*. p. 127. *The text (second)*. p. 98.

<sup>157</sup>However, the second version omits this. Ibid.

# Chapter Thirty Four: Legal decisions on matters related to the Jews and the Christians

A written petition was made to Yaḥyā ibn ʿUmar<sup>158</sup> by a market supervisor (*ṣāḥib al-sūq*) of Qayrawān about the Jews and the Christians who resembled the Muslims in their dressing because they were not wearing *riqā*<sup>159</sup> and *zunnār*<sup>160</sup> in order to distinguish themselves. They were also seen to carry with them a wine-press. The petition then asked Yaḥyā what action should be taken against them. Yaḥyā replied to him in writing that he thought that they had be punished and be paraded in front of the Jews and the Christians so that it would deter others from committing such acts. The same was the opinion of *qāḍī* Ibn Ṭālib<sup>161</sup>.

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<sup>158</sup> According to the second version, the matter was informed by Yaḥyā to Aḥmad al-Quṣarī. However, the first version omits this. *The text (first)*. p. 128. *The text (second)*. p. 96.

<sup>159</sup> A patched clothes. *Lane*. 1:1136-7.

<sup>160</sup> A band or rope worn around the waist. *Lane*. 1:1258.

<sup>161</sup> *The text (first)*. p. 128. *The text (second)*. pp. 96-7.



**Chapter Thirty Five: Legal decisions on sale by a blind person and those suffering from serious illnesses**

Yaḥyā ibn ʿUmar was asked<sup>162</sup> by a market supervisor of Sūsah about the case of a blind man selling oil, vinegar and other goods, whether he should be prevented. Yaḥyā agreed and he maintained the purchaser had to return the goods that he bought from him. However, he is allowed to sell his goods to someone who knows him and that person must not sell them to others<sup>163</sup>. Yaḥyā was asked by someone about the case of a person suffering from leprosy (*judhām*) found selling his clothes. Yaḥyā replied that the purchaser has a right to return the clothes if the dirt cannot be washed away and vice versa<sup>164</sup>.

**Chapter Thirty Six: A legal decision on a matter related to people who are suffering from leprosy**

Saḥnūn was asked by someone concerning the case of certain people who are suffering from leprosy in a town where it has only one source of water and one place for worship. Saḥnūn replied that they should not be

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<sup>162</sup>The second version held that the inquiry was made in the presence of the transmitter and he had listened to their conversation. However, the first version omits this. *The text (first)*. p. 129. *The text (second)*. p. 98.

<sup>163</sup>*The text (first)*. p. 129. *The text*. pp. 98-99.

<sup>164</sup>However, the second version omits this. *Ibid*.

forbidden from sitting in the mosque and from praying. However, they should not be allowed to take ablution or wash themselves in running water, but will be helped by another healthy person, where the water will be poured out to them from a container<sup>165</sup>.

### Chapter Thirty Seven: **Legal decisions on measures of capacity and weights**

Yahyā reported to Aḥmad al-Quṣarī that al-Ḥārith ibn Miskīn related to him from Ashhab ibn ʿAbd al-ʿAzīz from Mālik<sup>166</sup> that the vendor should not give deficient measure, as this has been demonstrated by the Qurʾān which reads: "Woe to those who give deficient measure"<sup>167</sup>. Regarding the sale by weight for goods like saffron and meat, the pointer (*lisān al-mīzān*) had to be balanced<sup>168</sup>. According to Mālik in order to give full measure the vendor had to fill the measure of capacity with the goods without shaking it and remove what was in excess by using his hand<sup>169</sup>.

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<sup>165</sup>This discussion cannot be found in the text of the second version. *The text (first)*. pp. 129-130.

<sup>166</sup>This is the reading of the second version, whereas the first version had only indicated that Mālik was asked by an unidentified person. *The text (first)*. p. 130. *The text (second)*. p. 99-100.

<sup>167</sup>*Al-Qurʾān*. 83:1.

<sup>168</sup>*The text (first)*. p. 131. *The text (second)*. pp. 99-103. See J.D. Latham. "Interpretation of a passage on scales (*mawāzin*) in an Andalusian Ḥisba manual". *JSS* 1978. p. 285.

<sup>169</sup>*The text (first)*. pp. 131-2. *The text (second)*. pp. 104-8.

### Chapter Thirty Eight: **A legal decision on fixing the price by force**

Ibn Wahb related from Mālik when the latter was asked by a market supervisor (*ṣāhib al-sūq*) that it is not allowed to fix the price for the vendors by using force. An example of this was a case of a vendor who wanted to sell his goods of a lesser quality with a reduced price, but he was ordered by the market supervisor either to raise the price or leave the market. This, according to Mālik, is not acceptable<sup>170</sup>.

### Chapter Thirty Nine: **Legal decisions on the vendors who are cheating and giving short weight**

Ibn Ḥabīb related from Ibn al-Mājishūn that it is the duty of the ruler to carry out an inspection of weights and measures of capacity from time to time and advise his subjects to give full measure. The same was the opinion of Mālik<sup>171</sup>. As for the punishment of the offenders who had committed the same offence several times, Ibn al-Mājishūn holds that they are liable to be punished by beating, detention and being banned from the market. However, he is against confiscating the offender's goods and donating them to the poor, except when the value of the goods is nominal,

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<sup>170</sup>*The text (first)*. p. 132. *The text (second)*. pp. 103-4.

<sup>171</sup>However, the first version omits this section. *The text (first)*. p. 133. *The text (second)*. p. 108.

such as a small quantity of milk and bread. According to Ibn Ḥabīb, the adulterated goods will not be returned to the owner, but be given to a trustworthy person to be sold in the market on his behalf. As for bread, it will be broken up and returned to its owner<sup>172</sup>.

#### Chapter Forty: **A legal decision on fixing the price of food during an inflation**

Yahyā ibn ʿUmar reported to Aḥmad al-Quṣarī that he had narrated from al-Walīd ibn Muʿāwiyah from al-Dimyāṭī<sup>173</sup> that Ibn al-Qāsim was asked about the statement of Mālik who had instructed the vendors to take out their goods and sell them in the market when there was a public demand for them and the price had increased. Ibn al-Qāsim replied that the vendors should be allowed to sell their goods without fixing the price on them. Instead, they should be able to sell them according to their wishes because these are their property. He argued that the matter had been mentioned by Mālik who said that the vendors should be ordered to sell out their stock of goods for that year, except for the food for his own use. Yahyā

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<sup>172</sup>*The text (first)*. pp. 133-4. *The text (second)*. pp. 108-111.

<sup>173</sup>This method of *isnād* is omitted by the first version. *The text (first)*. p. 134. *The text (second)*. p. 111.

defined the stock mentioned by Mālik as the vendor's annual stock of goods<sup>174</sup>.

#### Chapter Forty One: A legal decision on hoarding

Aḥmad al-Quṣarī claimed he heard Yaḥyā saying that the vendors who were hoarding food and causing the market to be destroyed should be penalised by confiscating their goods and selling them in the market, so that the profit could be donated. A warning will then be given and if they repeat the offence, they will be punished by beating and being paraded in the market<sup>175</sup>. With regard to the nomadic people who came to sell their goods and were sent to stay in public accommodation, the market supervisor must inform them to sell the goods in the market. According to Yaḥyā, it is not permissible for anyone to replenish his annual stock of grain when the price is high. Yaḥyā was asked by the people of al-Qaṣr that their market was too crowded so that the vendors did not have enough space to sell their goods in the market<sup>176</sup>. Yaḥyā replied that in a normal situation when the price is not increased a person is allowed to sell his goods at his house as long as it does not destroy the market. However, if the price had

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<sup>174</sup>*The text (first)*. pp. 134-5. *The text (second)*. pp. 111-2.

<sup>175</sup>This section is omitted by the first version. *The text (second)*. p. 113.

<sup>176</sup>*The text (first)*. p. 136. *The text (second)*. p. 115-6.

increased no one should be permitted to sell their goods except in the market<sup>177</sup>.

#### Chapter Forty Two: Legal decisions on the sale to a stranger

Yaḥyā reported that Saḥnūn was asked about a stranger who entered the market and bought goods such as oil or wheat but was not informed of their prices, whether the sale was considered as an uncertain transaction (*gharar*). Saḥnūn replied that the sale of such kind of goods was known to the public. Thus, it is allowed. However, according to Yaḥyā it is unlawful to the vendor to manipulate a stranger who do not know the price of goods<sup>178</sup>.

#### Chapter Forty Three: A legal decision on the sale of food in jars (*azyār*) and containers

Saḥnūn was asked about the sale of figs and salted fish (*ṣīr*) in a jar where the purchaser after the contract of sale had been concluded claimed that the lower part of the jar contained a lesser quality of goods, compared to the upper part which was visible to him during the sale. The same was

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<sup>177</sup>*The text (first)*. pp. 136-7. *The text (second)*. pp. 116-7.

<sup>178</sup>*The text (first)*. p. 137. *The text (second)*. p. 118. Similar statement was made by Ibn Taymiyyah, *al-Ḥisbah*. p. 22.



the case for the sale of grapes, pomegranates and melons in containers and baskets. Saḥnūn replied that in this case the purchaser is regarded as the plaintiff and he is liable to provide proof. However, the vendor has a right to reject this accusation by taking an oath that the quality of goods he sold to the purchaser in the lower part of the container was as good as that of the upper one<sup>179</sup>.

#### **Chapter Forty Four: A legal decision on the sale of clothes infested with lice**

Yaḥyā maintained that the sale of clothes infested with lice is binding if the lice can be detected and removed. However, he held that the purchaser has a right to return the clothes if the lice are too many and cannot be removed because the sale is considered a kind of cheating<sup>180</sup>.

#### **Chapter Forty Five: A legal decision on the sale of ashes used to whiten spun thread**

Yaḥyā was asked about the case of a woman who bought ashes from a vendor to whiten a spun thread and the vendor informed her that it was of good quality. However, when the woman used it, the thread had not

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<sup>179</sup>The whole discussion is omitted by the first version. *The text (second)*. pp. 120-4.

<sup>180</sup>The whole discussion is omitted by the second version. *The text (first)*. p. 137.

become whitened. He replied that a test should be carried out to determine the quality of the remaining part of the ashes. If the result shows that the thread had become whitened, no legal action can be taken against the vendor. In contrast, the woman will receive her repayment if the test was unsuccessful. However, if all the ashes have been used by the woman, the vendor may take an oath that the ashes he sold were of good quality. Instead, the woman may give evidence against what he had claimed<sup>181</sup>.

#### Chapter Forty Six: **A legal decision on a matter related to money-changing**

According to Mālik<sup>182</sup> if someone has given a *dīnār* to a money-changer to be changed for *dirhams*, and the *dīnār* is then stolen, the money-changer is liable for that. The same was the opinion given by Ibn al-Qāsim and Aṣḥabagh that the money-changer is responsible for the loss because money-changing is considered as a contract of sale and the money had been handed over to the money-changer. The same applies if the money-changer damages the money given to him, and he is liable for the damage, except when the damage was only slight. According to Yaḥyā, someone who intentionally breaks the coin is liable to repair it. However, if a person

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<sup>181</sup>*The text (first)*. p. 137. *The text (second)*. pp. 124-5.

<sup>182</sup>Both texts indicate that Yaḥyā had referred to the statement of Mālik through ʿUbayd ibn Muʿāwiyah who narrated it from Aṣḥabagh ibn al-Faraj from Ibn al-Qāsim. *The text (first)*. p. 138. *The text (second)*. p. 126.

wanted to test the genuineness of a *dīnār* by biting it and then damaged the coin, he is not liable for that<sup>183</sup>.

Chapter Forty Seven: **Matters related to the sale of figs, beans (*fūl*) and the discussion of wages for the workers**

According to Yaḥyā, if the purchaser who bought beans demanded that the sale include stalks (*qaṣab*) but the vendor disagreed, the stalks must be given to the purchaser except when the practice of the place is different. In relation to the selling of figs<sup>184</sup>, the purchaser who bought the fruit claimed that the sale also included the leaves. Yaḥyā maintained that this claim was not acceptable.

As for someone who was paid to remove the seeds of cotton, the seeds belong to the owner of the cotton and the worker will only receive his wage. The same rule applies to the grinder who grinds the wheat, that the bran (*nukhālah*) belongs to the owner of the wheat. Similarly, the remnant used by the tailor from making trousers and shirts, belong to the shirt's owner.

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<sup>183</sup>*The text*. p. 138. *The text (second)*. pp. 125-8.

<sup>184</sup>The first version held for the first time that inquiry on this matter was made by Ibn Shibl to Yaḥyā. However, the second version maintained that it was derived from Aḥmad al-Quṣarī. *The text (first)*. p. 138-9. *The text (second)*. p. 128.

Yaḥyā then maintained that the same rule applied to other works carried out by workers<sup>185</sup>.

#### Chapter Forty Eight: Legal decision on the slaughtering of sheep

Yaḥyā held that it is unlawful to eat sheep which had been slaughtered without proper conduct when the *jūzah* (thyroid cartilage) remained as part of the animal's body since it should be separated from it<sup>186</sup>. Ibn Shibl asked Yaḥyā<sup>187</sup> what would happen to the slaughterer? He replied that the slaughterer is liable to compensate the owner of the animal with an equivalent sheep. Ḥamdīs al-Qaṭṭān reported that Saḥnūn did not forbid the sale of the hide of an animal slaughtered during the festival of *ʿĪd al-Aḍḥā*. Ḥamdīs also held that he was in the company of Saḥnūn since the year 223 A.H. until the latter died<sup>188</sup>.

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<sup>185</sup>*The text (first)*. pp. 138-140. *The text (second)*. pp. 128-131.

<sup>186</sup>The jurists are unanimous that the correct method of slaughtering is by cutting the animal's gullet (*ḥulqūm*) for breathing and for taking food. They also agree that the *jūzah* had to be separated from the animal's body. *Wahbah*. 3: 656.

<sup>187</sup>This was the second occasion that the text of the first version had indicated that the question was asked by the transmitter, Ibn Shibl. However, the second version omits this. *The text (first)*. p. 140.

<sup>188</sup>Based on this information, it can be calculated that he was in the company of Saḥnūn for about 17 years (from 223 to 240 A.H.). This account seems to be more acceptable than what had been suggested by Ibn Farḥūn and Makhlūf that he was born in 230 A.H. who in fact, had considered Ḥamdīs as an associate of Saḥnūn. However, the whole discussion in this chapter is omitted by the second version. *The text (first)*. p. 141. Ibn Farḥūn, *al-Dībāj*. p. 31. Makhlūf, *Ṭabaqāt*. p. 71. The above statements were made without making reference to Yaḥyā, and thus it seems that they are added to the text by the transmitter.

Chapter Forty Nine: **Statements on basic house equipment and the wedding outfit (*jihāz*)<sup>189</sup> for the bride**

According to Ibn Ḥabīb the *jihāz* should be prepared by the father of the bride. For that matter, if the father had made a confession that the *jihāz* was made on the basis of a loan (*ʿāriyah*) to his daughter, which then was stolen or went missing and there were witnesses that the *jihāz* had been in her house, the matter can be classified in two situations. If the daughter was a virgin (*bikr*) before the marriage, she will not be liable for the loss, unless there are evidences to suggest that it was because of her negligence. As for a *thayyib*, if she knew of her father's confession and was present on that occasion, she is liable for the loss, and vice versa. Ibn al-Mājishūn held that the husband has no right to interfere in this matter if the *jihāz* which was provided by the bride's family had been made it on the basis of other than a gift (*ghayr ʿaṭiyyah*)<sup>190</sup>.

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<sup>189</sup> *Jihāz* is a basic house's equipment and it also includes the wedding outfit for a bride. The jurists differed as to whom should be responsible to provide this *jihāz*. According to the Mālikīs, it was the responsibility of the family of the bride, since the bridegroom had to pay the *mahr* for the bride. On contrary, the Ḥanafīs held that the matter should be provided by the bridegroom. *Wahbah*. 7: 311. See *Lane*. 1: 476. *Hava*. p. 102. *Elias*. p. 127.

<sup>190</sup> The whole discussion is omitted by the second version. *The text (first)*. pp. 141-2. The above statements were made without referring to Yaḥyā, and thus are believed to be added to the text by the transmitter.



Chapter Fifty: **Statements on *qadhf***

Ibn al-Qāsim maintained that a person accused of the crime of slanderous accusation (*qadhf*) cannot be punished either by flogging or by imprisonment when the evidence against him was offered by only one witness. Instead, he can be detained for a short period until he confesses so that he can be punished. Thus, Ibn al-Qāsim held that he should be released if he had been detained for a long period of time and he did not make any confession of the slanderous accusation brought against him<sup>191</sup>. Ibn al-Shibl then said<sup>192</sup> that the person accused can be punished if the period of detention had been prolonged and he did not confess. However, he was not sure about the appropriate method of punishment to be inflicted on him. According to Aṣbagh, the person accused can be punished if he is a wicked man and is known for making abusive remarks on others. Therefore, if the person accused is not of that category, he will only be sent to prison until he has made a confession<sup>193</sup>.

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<sup>191</sup>The whole discussion is omitted by the second version. *The text (first)*. p. 142.

<sup>192</sup>The text reads *qultu*. Thus, this is the third occasion of which the text of the first version had indicated that the statement was made by the transmitter, Ibn al-Shibl. *The text (first)*. p. 142.

<sup>193</sup>The whole discussion is omitted by the second version. *The text (first)*. pp. 142-3. The above statements do not refer to Yaḥyā and are believed to be added to the text by the transmitter.



Chapter Fifty One: **A statement on things that can be taken by market supervisor (*ṣāḥīb al-sūq*) from the vendors.**

The jurists differed on this matter; some maintained that the market supervisor is prohibited (*ḥaram*) to receive any goods from the vendors, others said it is disapproved (*makrūh*) whilst the rest allowed it. However, the most acceptable opinion was that it is prohibited for the market supervisor who was not in need to receive goods from the vendors. Therefore, he is allowed to take them if he is in great need, on condition that he will not be dependant on them. Nevertheless, it is better for him not to do so<sup>194</sup>.

Chapter Fifty Two: **Statements on matters concerning immoral behaviour**

A woman known as Ḥakīmah who had committed wrongful act with a man was sent to Saḥnūn, so he punished her by beating and detention. According to another report, her house was marked with a clay at the door. She was beaten with a whip (*sawṭ*) while sitting on a large basket. With

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<sup>194</sup>The whole discussion is omitted by the first version. *The text (second)*. pp. 131-2. It seems that this statement was added to the text by the transmitter.

regard to young offenders, their feet were chained and they were detained at their parent's house and not in the prison<sup>195</sup>.

### Chapter Fifty Three: **Legal decisions on the sale of meat together with hearts and stomach**

Aḥmad al-Quṣarī reported<sup>196</sup> that *qāḍī* Ibn al-Ṭālib prohibited the sale of meat together with heart, stomach or any other things. Yaḥyā explained that the sale was not allowed because a *dirham* can buy two *raṭls* weight of meat or six *raṭls* of stomach<sup>197</sup>.

### **The problem of price-fixing**

As previously mentioned, the text deals with many issues. However, one of the most important matters that can be found in the text concerns price-fixing (*tasʿīr*). In fact, arguments about price-fixing can be found much earlier than this<sup>198</sup>. According to the Mālikīs and the Ḥanbalīs, price-fixing is permissible and on certain occasions it becomes a compulsory act

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<sup>195</sup>The whole discussion is omitted by the first version. *The text (second)*. pp. 133-5. Reference to Yaḥyā is not found, and thus these statements probably are added to the text by the transmitter.

<sup>196</sup>This is the reading of the second version, whereas the first version omits it. *The text (first)*. p. 143. *The text (second)*. p. 119.

<sup>197</sup>*The text (first)*. p. 143. *The text (second)*. pp. 119-120.

<sup>198</sup>See the arguments between Mālik and al-Shāfiʿī. Ibn Qayyim, *al-Ṭuruq*. pp. 261-7.

upon the ruler. On the other hand, the Shāfi'is and the Ḥanafīs are against price-fixing<sup>199</sup>. The dispute on this matter was, in fact, based on their understanding of the tradition of the Prophet, narrated by Anas ibn Mālik, that the price had increased in the time of the Prophet, so people came to see him and said: "O Messenger of God, fix the price for us". The Prophet replied: "O people, when the price is high or low it is by the Will of God and I hope to meet Him when no one will claim injustice against me either for property or blood"<sup>200</sup>. According to the Shāfi'is and the Ḥanafīs the Prophet had refused to fix the price because it would have been unjust to the vendors. However, the Mālikīs and the Ḥanbalīs argue that the tradition only applies to a specific situation. They maintain that the tradition did not mention any injustice committed by the vendors which had inflated the price. Instead, they held that the price increased due to natural causes. Thus, in this situation, the Prophet refused to fix the price for them because it would be unjust to the vendors<sup>201</sup>. On that basis, in a situation where the price had increased because of an injustice by the vendors, the Mālikīs and the Ḥanbalīs held that it is permissible to fix the price for them. Nonetheless, such an intervention by the public authorities must be made after a careful examination into each case. Thus, Ibn Ḥabīb maintains

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<sup>199</sup>See *Wahbah*. 3:588-590. See also 'Abd al-Karīm al-Khaṭṭāb, *al-Siyāsah al-Māliyyah fī al-Islām*. pp. 209-210.

<sup>200</sup>Ibid. See Ibn al-Athīr, *Nihāyah*. vol. 2, p. 368.

<sup>201</sup>According to Ibn Taymiyyah, the price rise in the time of the Prophet was due to a shortage of supply and an increase in the demand for the goods. Ibn Taymiyyah, *al-Ḥisbah*. p. 27.

that price-fixing is, in fact, a settlement to an equivalent price (*thaman mithl*). Therefore, when the price has increased and the public has protested against it, a settlement can be achieved through a negotiation initiated by the public authorities. The meeting would attempt to reach a settlement at an agreed price for the parties involved which is known as an equivalent price<sup>202</sup>. Therefore, it can be concluded that price-fixing is not permissible in a normal situation. It is only applicable when it involves with injustice committed by the vendors. Thus, intervention by the public authorities in this matter must be made on the grounds of public interest<sup>203</sup>.

However, the question still remains unanswered here because the work of Yaḥyā ibn ʿUmar does not deal with the problem of vendors who have increased the price, but with those who reduce it<sup>204</sup>. According to Ibn Qayyim, in this matter Mālik and al-Shāfiʿī have differed. However, both are referring to the tradition of ʿUmar ibn al-Khaṭṭāb who had ordered Ḥātib ibn Abī Baltaʿah to either raise his price or leave the market. Based on this practice of ʿUmar, Mālik maintained that when a vendor has reduced his price and where such an action would destroy the market, will be instructed to raise his price or leave the market<sup>205</sup>. This is also

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<sup>202</sup>Ibn ʿAbd al-Raʿūf, *Risālah*. pp. 88-9. Ibn Qayyim, *al-Ṭuruq*. p. 265.

<sup>203</sup>See *The text (second)*. p. 45. See also Ibn Taymiyyah, *al-Ḥisbah*. p. 24.

<sup>204</sup>See *The text (first)*. pp. 106-8. *The text (second)*. pp. 40-7. See pp. 87-9 above.

<sup>205</sup>*The text (second)*. p. 44. Ibn Qayyim, *al-Ṭuruq*. p. 261.

explained by Yaḥyā as meaning that variance in prices should be prevented in order to avoid the other vendors who are selling at higher prices feeling so annoyed that they might withhold their goods which would destroy the market<sup>206</sup>.

Meanwhile, al-Shāfiʿī refers to an extended version of the tradition of ʿUmar. According to this tradition, ʿUmar met Ḥātīb selling raisins in the market and asked him the price he was offering. When ʿUmar was informed about the price, he told Ḥātīb either to increase the price or to bring his raisins to his house because a caravan was coming from al-Ṭāʾif with raisins and they might be misled by his price. When they departed and ʿUmar had examined his conscience, so he went to Ḥātīb's house and said to him: "Indeed, what I ordered you was not of my (correct) opinion or my (correct) legal judgement, so, sell your raisins as you like and do what ever you desire"<sup>207</sup>. On this basis, al-Shāfiʿī maintained that each individual should be able to conduct his affairs as he wished. Even though a person may be constrained by law to comply with certain rules, this was not such a case in this matter<sup>208</sup>.

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<sup>206</sup>*The text (second)*. p. 46. See pp. 88-9 above.

<sup>207</sup>Al-Muzanī, *Mukhtaṣar*. in al-Shāfiʿī's *al-Umm*. vol. 8, p. 191. Ibn Qayyim, *al-Ṭuruq*. p. 263.

<sup>208</sup>*Ibid*.

In the case of Yaḥyā ibn ʿUmar, he is against price-fixing in normal situations. He even disagreed with fixing the price for the vendors who were hoarding goods at a time of scarcity, but instead favoured compelling them to sell the goods in the market. However, Yaḥyā held that it is wrong to leave one particular vendor selling at a cheaper price than the market<sup>209</sup>. Thus, he should be ordered to increase the price by accepting the market price or to leave the market. Yaḥyā argues that such an action is justified for the purpose of maintaining stability in the market<sup>210</sup>. In this connection, price-fixing should be discussed together with the issues of hoarding (*iḥtikār*) and "monopoly", i.e. where only one particular vendor who was in need of money had been allowed to sell in the market. The fact that Yaḥyā ibn ʿUmar had neglected the issue of price-fixing when the price is increased could be for the reason that his work was a series of questions and answers. Presumably, Yaḥyā ibn ʿUmar would agree that the same action should be taken against the vendors who had increased the price<sup>211</sup>.

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<sup>209</sup>Presumably, this situation is similar to what has been visualised by Ibn Qayyim. According to him when the public have established a common price (*siʿr ghālib*) and some of the vendors want to sell at a higher or cheaper price, Mālik holds this to be not acceptable and it should be prevented. Ibn Qayyim, *al-Ṭuruq*. p. 261.

<sup>210</sup>See pp. 113, 129 above.

<sup>211</sup>However, see pp. 130-1.



## CHAPTER THREE

### The elements of *ḥisbah*

#### 3.0. Introduction

Perhaps al-Ghazālī's treatment of *ḥisbah* in his famous *Kitāb Ihya'* *ʿUlūm al-Dīn*<sup>1</sup>, is the most elaborate work on this matter. According to him, there are four basic elements of *ḥisbah*; the *muḥtasib* (person carrying out the duty of *ḥisbah*), the *muḥtasab ʿalaihi* (person being supervised), the *muḥtasab fīhi* (subject of supervision) and *ḥisbah* or *iḥtisāb* which consists of the stages of *ḥisbah*'s penalties and the manners of the *muḥtasib*<sup>2</sup>. Much earlier than him, Yaḥyā ibn ʿUmar had already discussed similar main elements which have been dealt with in the previous chapter<sup>3</sup>. However, his discussions on this matter are scattered throughout the text. The same was in fact, the case with latter jurists like al-Māwardī<sup>4</sup> and Ibn al-

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<sup>1</sup>Al-Ghazālī, *Ihya'*. vol. 2, pp. 391-455.

<sup>2</sup>Al-Ghazālī, *Ihya'*. p. 397.

<sup>3</sup>See pp. 70-5 above.

<sup>4</sup>Al-Māwardī, *Aḥkām*. pp. 240-259. See also H.F. Amedroz, "The *Ḥisba* Jurisdiction in the *Aḥkām Sulṭāniyya* of al-Māwardī", *JRAS*. 1916, pp. 77-101, 287-314.

Farrā<sup>5</sup>, who did discuss the issues, but without providing proper arrangements and giving sufficient information such as can be found in the work of al-Ghazālī. Thus, we find Ibn al-Ukhuwwah has cited most of the discussion found in this section of the work of al-Ghazālī on this matter, even though on many other occasions he had referred to the work of al-Māwardī. On that basis, it seems proper for this study to give much emphasis to the work of al-Ghazālī in order to provide a critical examination on the issue concerned which would be focusing on the following matters:

- i) The person carrying out the duty of *ḥisbah*
- ii) The person to be supervised
- iii) The subject of supervision
- iv) The stages of penalties of *ḥisbah* and the manners of the *muḥtasib*

### 3.1. The person carrying out the duty of *ḥisbah*

The first element of *ḥisbah* is the person carrying out the duty of *ḥisbah*. Regarding this, the work of Yaḥyā ibn ʿUmar has indicated that the duties of supervising the market and other related matters which was later known as *ḥisbah* are the responsibility of the Governor, the *qāḍī* and the

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<sup>5</sup>Ibn al-Farrā, *Aḥkām*. pp. 268-292.

market supervisor. This was so because during the time of the author, the institution of *ḥisbah* was at a preliminary stage<sup>6</sup>. However, later as was indicated by the work of al-Nāṣir li al-Ḥaqq (d. 304 A.H.), the duties had been designated to an official called *muḥtasib*<sup>7</sup>.

### 3.1.1. Qualification of the *muḥtasib*

Regarding this matter, little has been discussed by Yaḥyā ibn ʿUmar. However, he has indicated that the Governor had to appoint the most trusted person in his town to supervise the market<sup>8</sup>. On another occasion, Yaḥyā ibn ʿUmar maintained that the Governor should entrust a trustworthy person to observe the coinage and protect it from being counterfeited<sup>9</sup>. The matter then has been elaborated by later jurists. According to al-Nāṣir li al-Ḥaqq, the *muḥtasib* should be knowledgeable in law<sup>10</sup>. This is because, al-Nāṣir considered *ḥisbah* as a complete manifestation to the acts of *qaḍāʾ*<sup>11</sup>. However, later, it seems the *muḥtasib*'s legal capability was less demanded. Thus, al-Māwardī states

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<sup>6</sup>See pp. 76-7 above.

<sup>7</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*, edited by R.B. Serjeant, "A Zaydī manual of *Ḥisbah* of the 3rd Century (H)". *RSO*. pp. 1-34.

<sup>8</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 103. *The text (second)*. p. 31. See p. 79 above.

<sup>9</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 104. *The text (second)*. p. 35. See p. 81 above.

<sup>10</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11.

<sup>11</sup>*Ibid*.

that in order to qualify as a *muḥtasib*, one must be free (*ḥurr*), *ʿādil*<sup>12</sup>, capable of making an independent judgement, vigorous (*ṣarāmah*), strenuous (*khushūnah*) in religious matters and knowing what are regarded as obvious wrongful acts<sup>13</sup>. With regard to the last condition, al-Māwardī mentions that the Shāfiʿī jurists are in disagreement on whether a *muḥtasib* has the right to enforce his view in cases where legal opinion is not unanimous. Abū Saʿīd al-Iṣṭakhrī<sup>14</sup> for one is in favour of allowing the *muḥtasib* to enforce his own view (*raʾy*) and legal opinion (*ijtihād*). Therefore, in this situation the *muḥtasib* must be knowledgeable in law and competent to decide on matters where the jurists are not unanimous. In other words, he must be a legist (*min ahl al-ijtihād*), whereas others who are against this, argue that the *muḥtasib* must not impose his own opinion or that of his school of law on others, for all qualified men are at liberty to come to their own decisions concerning these cases. On this basis, the

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<sup>12</sup>A person who does not neglect the religious obligations and abstains from unlawful activities and has not committed any of the grave sins (*kabāʾir*) or continuously committed venial sins (*ṣaghāʾir*). See *Wahbah* 8:232. Therefore, it excludes the sinner (*fāsiq*). However, al-Ghazālī is in favour of allowing sinners to carry out the duty of *ḥisbah*, with limitation that they may not admonish others for he argues that their action is useless. See the following discussion on al-Ghazālī. Al-Ghazālī, *Iḥyāʾ*. p. 401. See pp. 148, 154-7 below.

<sup>13</sup>The same is the opinion of Ibn al-Farrāʾ, except for the first condition where according to him the *muḥtasib* must have sufficient experience (*khabīr*) instead of being free (*ḥurr*). However, Ibn al-Farrāʾ does not specifically mention that a slave is qualified to be a *muḥtasib*. Ibn al-Farrāʾ, *Aḥkām*. p. 269. Al-Māwardī, *Aḥkām*. p. 241.

<sup>14</sup>A Shāfiʿī jurist who was a *muḥtasib* of Baghdad under the Caliph Muqtadir (d. 320/932). Ibn al-Nadīm, *Fihrist*. p. 267.

*muḥtasib*'s legal ability is therefore, insignificant. All he needs to know are wrongful acts that the jurists have agreed upon<sup>15</sup>.

The same is the opinion of Ibn al-Farrā'. However, he does not mention the two opinions of the Shāfi'is, but he holds that the *muḥtasib* may be required to be a legist so that he could decide on doubtful cases, and where he is not, he is only required to be acquainted with obvious wrongful acts agreed upon by the jurists<sup>16</sup>. A similar view is given by Ibn al-Ukhuwwah. However, he discusses the case as to whether the *muḥtasib* is capable of making personal reasoning (*ijtihād*) on matters involving revealed law or only in those involving the customary law (*ʿurf*). According to Ibn al-Ukhuwwah, there are two opinions. The first is Abū Saʿīd al-Iṣṭakhrī, who holds that the *muḥtasib* is capable of *ijtihād* in both cases and he may impose his legal opinion on others. On the other hand, the second opinion allows the *muḥtasib* to decide on cases involving the customary law only<sup>17</sup>.

Meanwhile, according to al-Ghazālī in order to qualify as a *muḥtasib*, the person must satisfy three conditions that he must be a *mukallaf*<sup>18</sup>, a

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<sup>15</sup>Al-Māwardī, *Aḥkām*. p. 241.

<sup>16</sup>Ibn al-Farrā', *Aḥkām*. p. 269.

<sup>17</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 8-9.

<sup>18</sup>*Mukallaf*: a person who is obligated to observe the precepts of the religion, from which children and insane persons are excluded. *Wahbah* 7:364.

Muslim and have the capability of carrying out the duty of *ḥisbah*<sup>19</sup>. This, therefore, includes sinners (*fāsiq*), slaves (*raqīq*) and women<sup>20</sup>. As for the first condition, i.e. being a *mukallaf*, al-Ghazālī holds that it does not mean that a person who is not one, is not allowed to carry out the duty of *ḥisbah*, it merely means that he does not qualify to be a *muḥtasib*. Therefore, a child who is rational and about to reach the age of puberty - though he is under no legal compulsion - may carry out the duty of *ḥisbah*, that is, he is to be allowed to spill wine or break forbidden musical instruments. However, his action is not considered as an authority (*wilāyah*) but as a voluntary act (*qurbah*) as in the case of him performing the rituals, such as praying<sup>21</sup>. The same is the opinion of Ibn al-Ukhuwwah<sup>22</sup>. It should be noted here that children below the age of puberty are under no compulsion to practice the rituals but they are encouraged to do so where their good deeds are considered as a voluntary act (*qurbah*) and will be rewarded accordingly<sup>23</sup>.

It should be noted here that al-Ghazālī's treatment on this matter, was in fact dealing with two different kinds of person carrying out the duty

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<sup>19</sup>Further detail on this matter will be given in a later discussion. See pp. 159-162 below.

<sup>20</sup>Al-Ghazālī, *Iḥyā'*. p. 398.

<sup>21</sup>Al-Ghazālī, *Iḥyā'*. p. 398.

<sup>22</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 8.

<sup>23</sup>*Wahbah*. 4:754.



of *ḥisbah*: the official *muḥtasib* and the ordinary Muslim performing the duty. This is so because earlier than this, al-Ghazālī has indicated that the duty of enjoining the good and forbidding the evil - which he regards as a comprehensive expression to the term *ḥisbah*<sup>24</sup> - is a collective duty (*farḍ kifāyah*) on every Muslim<sup>25</sup>. It would appear that insofar as there is a *muḥtasib*, he would have the individual duty (*farḍ 'ayn*) to carry out the obligation. Thus, al-Māwardī and Ibn al-Farrā' in discussing the duty of the *muḥtasib* to carry this out make it *farḍ 'ayn* for him and *farḍ kifāyah* for other Muslims<sup>26</sup>. It is probable that al-Ghazālī would have agreed with them in making this obligation *farḍ 'ayn* for the *muḥtasib*. However, on many occasions, al-Ghazālī seems to be giving a similar identity to these two kinds of person. In fact, the matter has been dealt with by al-Māwardī and Ibn al-Farrā' and was then referred to by Ibn al-Ukhuwwah. According to them there are nine differences between the official *muḥtasib* and the ordinary Muslim carrying out the duty<sup>27</sup>:

- a) It is the personal duty (*farḍ 'ayn*) of the *muḥtasib*, whereas others are only collectively bound (*farḍ kifāyah*).

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<sup>24</sup>It is therefore can be concluded that whenever al-Ghazālī mentions the word *ḥisbah*, he is referring to the duty of enjoining the good and forbidding evil. Al-Ghazālī, *Iḥyā'*. p. 398.

<sup>25</sup>Al-Ghazālī, *Iḥyā'*. p. 391.

<sup>26</sup>Al-Māwardī, *Aḥkām* p. 240. Ibn al-Farrā', *Aḥkām*. p. 268.

<sup>27</sup>Al-Māwardī, *Aḥkām*. pp. 240-1. Ibn al-Farrā', *Aḥkām*. pp. 268-9. Ibn al-Ukhuwwah, *Ma'ālim*. pp. 11-2.

b) The *muḥtasib*'s action is obligatory by virtue of his appointment and therefore, must not be neglected, whilst it is a recommended act for a person acting voluntarily, which might be carried out by others.

c) The *muḥtasib* is subject to complaints about the wrongful acts that he is liable to act upon, whereas a person acting voluntarily is not. [Al-Māwardī and Ibn al-Farrā'<sup>28</sup> then explain that the *muḥtasib* is capable of hearing complaints involving the right of men in three cases: in short weights and measures, fraud in sale transactions and non-payment of debt]<sup>28</sup>.

d) The *muḥtasib* is liable to respond to such complaints, but others are not. [If the case is within his jurisdiction, i.e. the three cases mentioned in the previous note, the *muḥtasib* is able to compel the defendant to discharge his liability once admitted. It could be assumed that if the matter is not within his jurisdiction, the *muḥtasib* would bring the case to the attention of higher authority, such as the *qāḍī* or the official concerned. Thus, we find that in the matters were concerning funds needed to repair public buildings and a city wall, the *muḥtasib* may refer the case to the treasury.

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<sup>28</sup>Al-Māwardī, *Aḥkām*. p. 241. Ibn al-Farrā', *Aḥkām*. pp. 269-270.

Similarly, if the case involves a legal decision, he has to refer it to the *qāḍī*<sup>29</sup>.

e) The *muḥtasib* must carry out an investigation of an obvious wrongful act, so that he will be able to denounce it. Similarly, he has to examine the reason for someone neglecting the performance of good deeds, so that he will be able to enjoin him. As for the person acting voluntarily, he may not carry out any investigations or examinations on these matters.

f) The *muḥtasib* may appoint assistants to assist him in carrying out the duty of *ḥisbah*, whereas others may not do so.

g) The *muḥtasib* may resort to discretionary punishment (*taʿzīr*), in cases involving obvious wrongful acts, without extending to those of the revealed punishments (*ḥudūd*). As for someone acting voluntarily, he may neither impose the discretionary punishment nor the revealed punishment. [However, al-Ghazālī goes further declaring that the public may convey the truth and give proper advice, as in the case of a child exercising *ḥisbah* towards his father and the

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<sup>29</sup>Al-Māwardī. loc.cit. Ibn al-Farrāʾ. loc.cit.

public towards the rulers. The same is the opinion of his teacher al-Juwaynī]<sup>30</sup>.

h) The *muḥtasib* is entitled to a salary from the treasury (*bayt al-māl*), whereas a voluntary person is not.

i) Finally, in matters related to the customary practices (*ʿurf*), the *muḥtasib* may impose his own personal judgement (*ijtihād*), such as the removal of extension (*ʿajniḥah*) from one's shop. [In a similar way, Yaḥyā ibn ʿUmar states that in the case of a house situated in a narrow lane, the owner should not be allowed to create a door or an entrance to his home which would cause inconvenience to the passers-by]<sup>31</sup>. However, the *muḥtasib* is not capable of making legal decision involving the revealed law. As for the person acting voluntarily, he cannot impose his opinion in either case<sup>32</sup>.

Above are the differences between the *muḥtasib* who is regarded as an authority on *ḥisbah* (*wālī al-ḥisbah*) and a person acting voluntarily, even though both are permitted to carry out the duty. However, al-Ghazālī goes further to explain that such actions by the public are considered as

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<sup>30</sup> Al-Juwaynī, *Ghiyāthī*. pp. 237-9. Al-Ghazālī, *Iḥyāʾ*. p. 398. See pp. 158-9 below.

<sup>31</sup> Yaḥyā ibn ʿUmar, *The text (first)*. p. 127. *The text (second)*. p. 98.

<sup>32</sup> Al-Māwardī, *Aḥkām*. p. 242. However, see pp. 147-8 above.

*qurbah* (voluntary act), which includes the case of a child carrying out the duty of *ḥisbah* towards his father<sup>33</sup>. On another occasion, al-Māwardī referred to the *muḥtasib* as *nāẓir ʿalā al-ḥisbah*. In fact, as mentioned earlier, a similar term was used by Yaḥyā ibn ʿUmar in explaining the person responsible to supervise the market and other related matters<sup>34</sup>. According to him, the person responsible was known as *nāẓir ʿalā al-sūq*<sup>35</sup>.

### 3.1.1.1. A sinner (*fāsiq*) carrying out the duty of *ḥisbah*

It seems that al-Ghazālī's view of allowing a sinner (*fāsiq*) to carry out the duty of *ḥisbah* does not agree with the other jurists. Al-Māwardī and al-Farrā' clearly state that the *muḥtasib* must be trustworthy (*ʿādil*)<sup>36</sup>. The authors of *ḥisbah* manuals such as al-Saqāṭī who in agreeing with the jurists emphasises that the *muḥtasib* must be well known for his trustworthiness (*maʿlūm al-ʿadālah*). Al-Saqāṭī maintained that the official must be an expert in religion (*faqīh fī al-dīn*), commandant of justice, having an honourable character, ambitious, well-known for his

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<sup>33</sup>Al-Ghazālī, *Iḥyāʾ*. p. 398. See also Ibn al-Ukhuwwah, *Maʿālim*. p. 8.

<sup>34</sup>See p. 71 above.

<sup>35</sup>Al-Māwardī, *Aḥkām*. p. 242. Ibn al-Farrā', *Aḥkām*. p. 270. Yaḥyā ibn ʿUmar, *The text (first)*. pp. 103, 108. *The text (second)*. pp. 31-2, 33-4, 37. See p. 71 above.

<sup>36</sup>Al-Māwardī, *Aḥkām*. p. 241. Al-Farrā', *Aḥkām*. p. 269. See also al-Ghazālī, *Iḥyāʾ*. p. 399. See p. 146 above.

trustworthiness (*maʿlūm al-ʿadālah*), great patience, mild-tempered, cautiousness and understanding<sup>37</sup>. Although Ibn al-Ukhuwwah states that a sinner may qualify, he has also clearly mentioned that the *muḥtasib* must be trustworthy (*ʿādil*). In matters relating to the qualification of the *muḥtasib*, Ibn al-Ukhuwwah seems to follow the pattern of al-Ghazālī. This seems to be the case, particularly the wording and the arguments put forward, especially in the case of permitting children to carry out the duty of *ḥisbah*, but obvious disagreements can also be found for according to Ibn al-Ukhuwwah the official must be trustworthy (*ʿādil*) and a free man<sup>38</sup>. However, those who disapprove of a sinner exercising the duty of *ḥisbah* do not explain the reason for their disapproval. On the other hand al-Ghazālī explains the reason behind his view and suggests the reasons of those who disagree with him<sup>39</sup>.

According to al-Ghazālī, those who (without mentioning their names) disapprove of allowing a sinner to carry out the duty of *ḥisbah*, perhaps based their arguments on Quranic injunctions and Prophetic traditions in condemning the person who asks others to do good deeds but forgets himself<sup>40</sup>. They might also have based their view on an analogy (*qiyās*)

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<sup>37</sup> Al-Saqāṭī, *al-Ḥisbah*. p. 5.

<sup>38</sup> Al-Ghazālī, *Iḥyāʾ*. pp. 398-9. Ibn al-Ukhuwwah, *Maʿālim*. pp. 7-8.

<sup>39</sup> Al-Ghazālī, *Iḥyāʾ*. p. 399.

<sup>40</sup> *Al-Qurʾān*. 2:44, 40:35 and 61:3.



based on doubting that someone is not capable of doing justice himself while being able to do so with regard to others<sup>41</sup>.

Although al-Shayzarī does not mention that he disapproves of accepting a sinner as a *muḥtasib*, he uses the arguments mentioned by al-Ghazālī where the *Qurʾān* condemns those who ask others to do the right things but forget themselves. Al-Shayzarī maintains that the *muḥtasib* must practice according to his knowledge and that his action must not contradict what he preaches. He then refers to the above Quranic injunctions<sup>42</sup>.

Al-Ghazālī claims that his point of view is based on what has been legally accepted. According to him, it is against the consensus (*ijmāʿ*) to exclude sinners from carrying out the duty of *ḥisbah*, because since the time of the Prophet they have fought against the infidels and nobody disapproved of them taking part in these battles. Therefore, since they were allowed to take part in these battles against the infidels, they must also be accepted to carry out the duty of *ḥisbah*. In this matter al-Ghazālī has referred to the sinner as a man who wears silk clothes and drinks wine<sup>43</sup>. However, in relation to giving admonition (*waʿz*), the sinner is excluded. In this

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<sup>41</sup>Al-Ghazālī, *Iḥyāʾ*. p. 401. Ibn al-Ukhuwwah, *Maʿālim*. pp. 195-6.

<sup>42</sup>Al-Shayzarī, *Nihāyah*. pp. 6-7. See *Al-Qurʾān*. 2:44, 40:35 and 61:3.

<sup>43</sup>Al-Ghazālī, *Iḥyāʾ*. p. 399.

situation, he argues that only a trustworthy (*ʿādil*) *muḥtasib* is allowed to admonish the wrongdoer<sup>44</sup>.

Regarding the Quranic injunctions, according to al-Ghazālī, in the first verse the condemnation was because they have abandoned the duty of performing good deeds (*maʿrūf*), not because they have invited other to do so<sup>45</sup>. The second verse is referring to those who do not keep their promise<sup>46</sup>. While the other verse is condemning them because they have forgotten themselves, and not because they have invited others to do good deeds (*maʿrūf*)<sup>47</sup>. It seems probable that al-Ghazālī's treatment on this matter is in fact, dealing with ordinary Muslim carrying out the duty of *ḥisbah*. Thus, presumably, he would agree in making the appointed *muḥtasib* an *ʿādil* person.

### 3.1.1.2. Ordinary people carrying out the duty of *ḥisbah*

Al-Ghazālī then discusses the situation whereby in order for a person to carry out the duty of *ḥisbah*, he must first have the permission of the Caliph (*Imām*) or the Governor (*wālī*). Al-Ghazālī does not describe to whom

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<sup>44</sup>Al-Ghazālī, *Iḥyāʾ*, p. 401.

<sup>45</sup>*Al-Qurʾān*. 2:44.

<sup>46</sup>*Al-Qurʾān*. 40:35.

<sup>47</sup>*Al-Qurʾān*. 61:3.

this opinion belongs, but merely said "people" (*qaum*). However, he then mentioned the opinion of the Rawāfiḍ who disallowed the function of *ḥisbah* be carried out unless the "true Caliph" (*Imām al-ḥaqq*) has appeared and sanctioned it<sup>48</sup>. The condition of having the permission of the Caliph or the Governor, therefore excluded ordinary people from the duty. However, according to him this condition is not valid since the *Qurʾān* and the traditions imposed the obligation of carrying out the duty of *ḥisbah* in general term (*ʿāmm*) - that someone who has witnessed a wrongful act but kept silent, has committed a sin. Thus, to limit (*takhsīṣ*) this obligation to those permitted by the Caliph has no legal grounds. It is clear that in this matter al-Ghazālī is dealing with ordinary Muslims carrying out the duty of *ḥisbah* and not the appointed *muḥtasib*<sup>49</sup>.

Al-Ghazālī goes on to discuss whether it is possible for a child to carry out the duty of *ḥisbah* to his father, a slave to his guardian, a wife to her husband, a student to his teacher and the public to their authority. On these matters, al-Ghazālī agrees that they have a right to do so, but are restricted to informing the truth and to giving proper advice. In certain circumstances, they may, if necessary, take immediate action, as for example a child might break his father's musical instrument and return stolen money. These actions are permissible as long as they do not irritate

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<sup>48</sup> Al-Ghazālī, *Iḥyāʾ*. p. 402.

<sup>49</sup> Al-Ghazālī, *Iḥyāʾ*. p. 402.

his father or cause him to suffer loss of money. However, it seems such actions need to be justified by legal reasoning which is not applicable to a child. Thus, we find al-Ghazālī then continues to refer to the statement of al-Ḥasan al-Baṣrī (d. 110)<sup>50</sup>, who when asked about a child exercising this duty towards his father, said that the child may apply this duty by giving admonition as long as this will not irritate his father and if it does the child should stop<sup>51</sup>.

### 3.1.1.3. Capability of carrying out the duty of *ḥisbah*

A person must have the capability of carrying out the duty of *ḥisbah* before he can be qualified to be a *muḥtasib*. Based on this qualification, a weak person is excluded from this obligation, but he must perform *ḥisbah* in his heart. It should be noted that in this discussion al-Ghazālī is relating *ḥisbah* directly to *amr bi al-ma'rūf wa al-nahy 'an al-munkar*. According to al-Ghazālī, mere weakness does not simply remove this obligation and rather the actual weakness should be determined. What he means by actual

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<sup>50</sup> Al-Ḥasan ibn Abī al-Ḥasan al-Baṣrī was born in Medina in 21/642. He grew up in *Wādī al-Qurā* and one year after the Battle of *Siffin* he went to Baṣrah. He is regarded as one of the most prominent early Muslims in the first century of the Hijrah. When other men, who were held in great esteem, such as Ibn Sīrīn (d. 110 *EI(1)* 3:947-8) and al-Sha'bī (d. 110 most probably. *First EI*. 7:242-3), were being questioned on Yazīd's succession, but did not dare give their opinion, Ḥasan frankly expressed his disapproval. It is also said that when he died on 1st of Rajab of 110/10 October 728, the whole city of Baṣrah attended his obsequies. Ibn al-Nadīm, *al-Fihrist*. p. 202. H.Ritter, *EI(1)*. 3:247-8. *First EI*. 3:273. See Schacht, *Origin*. p. 87. Makdisi, *Rise* p. 162.

<sup>51</sup> Al-Ghazālī, *Iḥyā'*. p. 407.

weakness is on occasions when a speech against a wrongful act becomes useless and in turn causes harm to the speaker. These two elements (useless and harmful) are further developed by al-Ghazālī, whereby according to him they can be divided into four circumstances which entail different legal actions<sup>52</sup>:

- a) His reaction towards the wrongful acts is useless and will invite danger to himself such as being hit. In this situation he is not required (*wājib*) to carry out the duty of *ḥisbah*, in fact in some circumstances he may even be prohibited (*ḥarām*). He should not be present at the place where the wrongful act is being committed and should stay at home. If possible, he should be thinking of migrating.
- b) In the situation which is in contrast with the one mentioned above, he is categorised as having the capability of carrying out the duty of *ḥisbah* and therefore, he is required to do so.
- c) He knows that his action is useless but he can cope with the possible danger. In this situation he is not required to carry out the duty of *ḥisbah* since his action is useless.

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<sup>52</sup>Al-Ghazālī, *Iḥyā'*. pp. 407-8.

d) In contrast to the third situation, where he knows that his action will create danger but he is able to stop the wrongful acts, for example to destroy a musical instrument and to spill wine. In this situation he is neither required to nor forbidden to carry out the duty. Indeed, it is a preferred action (*mustahabb*).

According to al-Ghazālī, his opinion is based on the Prophet's tradition concerning the honour of telling the truth to a tyrant Caliph<sup>53</sup>. However, this preference is subject to certain occasions and circumstances. According to al-Ghazālī, if he knows that it will put him in obvious danger and will create another wrongful act (*munkar*), he is prohibited (*ḥarām*) from carrying out this duty. An example of this is, if he is to forbid an armed transgressor who is carrying a cup (*qadah*) containing wine, when he knows that the man will drink it and strike him if he tries to forbid him. This action according to al-Ghazālī, is like a blind person fighting in a war, where he already knows that he will be killed. Another example is when he spills heavy drinkers' wine knowing that they or their children will still be drinking it. In this situation his action is useless and will not prevent the wrongful act due to their addiction. However, if the *muhtasib* knows that his action will frighten the wrongdoers, or will put a stop to their wrongful

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<sup>53</sup>Al-Ghazālī, *Iḥyā'*. p. 408.



acts or will strengthen and raise the spirit of the Muslims, then he may or ought to do so<sup>54</sup>.

With regard to the fourth situation, a person must be certain (*yaqīn*) of his knowledge and he cannot rely on probability (*ẓann*). Therefore, if he strongly believes that a danger will befall him and that his action will become useless, then he is not required to carry out the duty of *ḥisbah*, but if he has any doubt as to the outcome, then he is required to do so<sup>55</sup>.

### 3.2. The person to be supervised (*muḥtasab ʿalaihi*)

The second element of *ḥisbah* is the person to be supervised. According to al-Ghazālī, the only requirement needed to make someone required to be supervised is that the wrongful act is committed by that person. It is sufficient that the person is a human being and he does not require him to be a *mukallaf*. For that matter, wrongful acts committed by children must be corrected and they must be prevented from drinking wine, even though such an act is not considered as a sin (*maʿṣiyah*) with regard to them. In fact, the matter has been dealt with by the work of Yaḥyā ibn

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<sup>54</sup>Ibid.

<sup>55</sup>Al-Ghazālī, *Iḥyāʾ*. p. 409.

ʿUmar that for as young offenders, they will be detained under the custody of their parent and will not be sent to prison<sup>56</sup>.

According to al-Ghazālī, the person to be supervised is also not required to be mentally sound. Thus, wrongful acts committed by an insane person such as committing an adultery with a woman or a bestiality with an animal must be corrected. However, an insane person who has abandoned the daily prayer and fasting must not be denounced, because such omissions are not considered as wrongful acts<sup>57</sup>. Presumably, this is because in the former situation, the matter had caused harm or injury to another living creature, whereas in the second case the wrongful acts did not involve others but the offender only.

Even though al-Ghazālī does not mention wrongful acts committed by a person acting involuntarily (*ikrāh*), perhaps he would agree that such an act has to be supervised by the *muḥtasib*. It is legally accepted that an involuntary act is one of three elements that is to be excluded from the punishment, the other two being actions committed by non-*mukallafs* and actions coming from an insane person<sup>58</sup>. The fact that al-Ghazālī

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<sup>56</sup>Yahyā ibn ʿUmar, *The text (second)*. p. 135. See pp. 74, 138-9 above and p. 182 below.

<sup>57</sup>Al-Ghazālī, *Iḥyāʾ*. p. 418.

<sup>58</sup>See *al-Qurʾān*. 4:92 and 33:5. See also ʿAbd al-Qādir ʿAwdah, *al-Tashrīʿ al-Jināʾī*. 1:432-3.

maintains that wrongful acts committed by the latter (non-*mukallaḥ* and an insane person) have to be corrected by the *muḥtasib*, however, makes it seem justifiable to include wrongful acts committed involuntarily. Perhaps, this would also include wrongful acts committed by mistake (*khaṭa'*) and in forgetfulness (*nisyān*). It seems probable that in the case of involuntarily act, the *muḥtasib* has to forbid such an act and should then denounce the person who has imposed the duress. As for wrongful acts committed by mistake and in forgetfulness, the actions to be taken by the *muḥtasib* are by informing the truth and giving advice which will be discussed in the fourth element of *ḥisbah*. This is a matter which is not far from what has been described in the tradition, when the Prophet said: "Help your fellow man who has been oppressed (*mazlūm*) and the oppressor (*ẓālim*)".

Al-Ghazālī disagrees with the claim which would apply the duty of *ḥisbah* toward animals on the grounds that they must be punished for destroying human crops. He holds the claim as not valid because the function of *ḥisbah* is considered to be a prevention of wrongful acts involving the rights of God (*ḥuqūq Allāh*)<sup>59</sup>. Al-Ghazālī argues that in the case of a man who destroys other people's property, he should be forbidden from committing such an act for two reasons: Firstly, it is a sin for it involves the rights of God; and secondly, it involves the rights of men

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<sup>59</sup>Al-Ghazālī. *Iḥyā'*. p. 418.

(*ḥuqūq al-ʿibad*) for the property does not belong to him. In the case where a man has injured another man with the latter's consent, he is guilty only because it involves the rights of God. As for the case of an animal which destroys people's property, it is wrong only because it involves the rights of men. Although, animals should be prevented from committing such an act, they must not be punished for their actions. In order to support his argument, al-Ghazālī maintains that in the case of an animal found eating carrion or drinking wine, it should not be prevented and it is even permitted to feed a dog trained for hunting on carrion. Also, al-Ghazālī argues that the function of *ḥisbah* involves the act of purifying the wrongdoer, which therefore is not applicable to animals<sup>60</sup>.

### 3.3. Subject of supervision (*muḥtasab fīhi*)

The third element of *ḥisbah* is the subject of supervision. Al-Ghazālī defines this as a wrongful act (*munkar*) which is obvious to the *muḥtasib* without spying (*tajassus*) and is commonly known without the need of personal reasoning (*ijtihād*)<sup>61</sup>. Therefore, it must conform to four conditions:

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<sup>60</sup>Ibid.

<sup>61</sup>Al-Ghazālī, *Iḥyāʾ*. p. 414.

a) It must be a wrongful act (*munkar*) which the public is prohibited by law from committing. Al-Ghazālī disagrees with restricting it to sinful acts, because according to him a wrongful act is more general. On that basis, the *muḥtasib* is therefore, obliged to respond towards a child or an insane person who have been drinking, by spilling the wine and forbidding them from drinking wine. Similarly, if he finds an insane person committing adultery with a woman or an animal, he has to forbid him although these acts are not considered as sins. This condition covers both grave (*kabā'ir*) and venial sins (*ṣaghā'ir*). Therefore, it includes the case of a man being alone with a woman who is not related to him (*ajnabiyyah*)<sup>62</sup>.

b) The wrongful act is continuing. However, precautions (*iḥtirāz*) must be taken against those who have finished drinking, for they might do it again. In a situation where, there is circumstantial evidence (*qarīnah*) showing that the person is determined to drink wine later on, the only method of *ḥisbah* applicable is by giving admonition. However, in the latter situation, the ordinary Muslim is excluded from doing this<sup>63</sup>.

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<sup>62</sup>Ibid.

<sup>63</sup>Ibid.

c) The wrongful act should be obvious to the *muḥtasib* without the need of spying (*tajassus*). Thus, the *muḥtasib* is not permitted to spy on hidden sins as this is forbidden by a Quranic injunction<sup>64</sup>. Al-Ghazālī then explains in further details the difference between obvious and hidden sins, for the *muḥtasib* is regarded as required to act in the former but not on the latter. According to al-Ghazālī, if someone commits a wrongful act in his house behind locked doors, the *muḥtasib* may not enter the house without the owner's permission. However, when circumstantial evidence makes what is hidden obvious, the *muḥtasib* should carry out his duty. The evidence can be determined by three means; voices, smell and shape. As for example when the *muḥtasib* is able to hear reprehensible voices or to smell wine or to recognize the shape of a lute, he is then required to carry out the duty of *ḥisbah* by denouncing these wrongful acts<sup>65</sup>.

d) The wrongful act should be commonly known and not require personal reasoning (*ijtihād*)<sup>66</sup>. Thus, the *muḥtasib* has no responsibility to act upon a matter which is subject to personal reasoning (*ijtihād*). For that matter, according to al-Ghazālī, a Ḥanafī

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<sup>64</sup> *Al-Qur'ān*. 49:12.

<sup>65</sup> Al-Ghazālī, *Iḥyā'*. pp. 414-5.

<sup>66</sup> However, see below pp. 209-211.



cannot denounce a Shāfi'ī eating a desert lizard (*ḍabb*) or meat over which God's name has not been proclaimed at slaughter. Likewise, a Shāfi'ī cannot denounce the practice of the Ḥanafī which gives the right to the relative on the maternal side (*dhawū al-arḥām*) to inherit, or of drinking *nabīdh* which is not intoxicant, or dwelling in a house acquired by right of pre-emption (*shuf'ah*) as a neighbour<sup>67</sup>. However, *ḥisbah* can be exercised within the same school of law. For example, a Shāfi'ī can denounce another Shāfi'ī marrying without a legal guardian (*walī*). *Ḥisbah* can also be carried out against a person of another school of law when his practice contradicts his school's teaching. Based on that, a Ḥanafī can denounce a Shāfi'ī marrying without a legal guardian. In this case the Ḥanafī may say to the Shāfi'ī that his action could be right, but it is wrong in his situation, because it contradicts his belief since he believes that his school of law is the most correct<sup>68</sup>. Likewise, a Shāfi'ī can denounce a Ḥanafī who is joining him in eating a desert lizard (*ḍabb*) or meat over which God's name has not been proclaimed at slaughter. In this case the Shāfi'ī may say to the Ḥanafī; "Either you decide that the Shāfi'ī school of law is the best to be followed so that you may eat it, or you have to leave it for it is against your opinion (*mu'taqad*)"<sup>69</sup>.

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<sup>67</sup>Al-Ghazālī, *Iḥyā'*. pp. 415-6. Ibn al-Ukhuwwah, *Ma'ālim*. p. 197.

<sup>68</sup>Al-Ghazālī, *Iḥyā'*. p. 416.

<sup>69</sup>Al-Ghazālī. Ibid.

Despite of the conditions described above by al-Ghazālī, in fact, the subjects of supervision of *ḥisbah* cover almost all aspects of daily life. This is evident in the other *ḥisbah* works. As found in the work of Yaḥyā ibn ʿUmar, the subjects of supervision include not only matters involving the market which cover all kind of economic activities, but also those relating to moral and religious behaviour, as well as health and the basic administration of the city<sup>70</sup>. Further discussions on this matter are made in a subsequent chapter of this thesis<sup>71</sup>.

### 3.4. Stages (*darajāt*) of the penalties of *ḥisbah*

It should be noted here that al-Ghazālī's discussion on this matter is made on two separate occasions. First, he holds that the *muḥtasib* should observe five steps (*marātib*) of *ḥisbah* in carrying out his duty<sup>72</sup>. Then, he maintains that there are eight stages (*darajāt*) of *ḥisbah*'s penalty<sup>73</sup>. It seems that the other three stages (*darajāt*) are additions to the former five steps (*marātib*) of *ḥisbah* which he had discussed earlier. In this way, we

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<sup>70</sup>See pp. 72-6 above.

<sup>71</sup>See pp. 189-190 below.

<sup>72</sup>Al-Ghazālī, *Iḥyāʾ*. pp. 402-3.

<sup>73</sup>Al-Ghazālī, *Iḥyāʾ*. pp. 420-5.

find Ibn al-Ukhuwwah had referred to the five stages of *ḥisbah*<sup>74</sup>. However, we will discuss here the eight stages of *ḥisbah*.

a) The first stage is making an inquiry (*ta<sup>c</sup>arruf*), i.e. to carry out an investigation on information received about a wrongful activity. However, spying is not permitted<sup>75</sup>. This is achieved by acting upon information given by two just witnesses who have not been informed of that wrongful act previously. In these circumstances, the *muḥtasib* can enter someone's house without permission so that he could investigate the wrongful activity. However, if the information was given by only one just witness (*ʿadl wāḥid*), it is preferable for the *muḥtasib* to enter the house with the owner's permission. Al-Ghazālī then refers to a saying, "to conceal what you have seen is better than to reveal what you are suspicious of"<sup>76</sup>.

b) The second stage is to give information (*ta<sup>c</sup>rif*) about what is right. This is because on some occasions the wrongful act is committed through ignorance and discontinued when the truth is revealed to the culprit<sup>77</sup>. An example is when an ordinary person performs prayer

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<sup>74</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālīm*. pp. 195-6.

<sup>75</sup>Al-Ghazālī, *Iḥyāʾ*. pp. 414-5. See also p. 80 above and p. 228 below.

<sup>76</sup>Al-Ghazālī, *Iḥyāʾ*. p. 420. See also p. 213 below.

<sup>77</sup>Ibid. See p. 108 above.

incorrectly due to ignorance and not disbelief, as otherwise he would not carry out the duty in the first place. In these circumstances, the *muḥtasib* must inform him of the proper practice by using appropriate words and not condemning him. This is because a person might feel hurt when the truth about his wrongful act is revealed. Al-Ghazālī holds that to reveal the truth is actually revealing to someone his wrongful acts. He then makes a comparison between revealing these wrongful acts and uncovering the part of the body which should be concealed (*ʿawrah*). He considers that the former involves more severe harm than the latter, for the soul (*nafs*) is more dignified than the body (*badan*), therefore to insult the former is worse than the latter<sup>78</sup>. Therefore, the *muḥtasib* should use appropriate language, as for example he may say; "Nobody is born perfect with the ability to know the correct way of performing the prayer, including myself. However, a wise person has taught me, so that I am able to know the truth. Therefore, I will do the same to you." According to al-Ghazālī, it is unlawful for a Muslim to annoy other Muslims in forbidding their wrongful actions. Al-Ghazālī argues that it does not make any sense for someone to wash a blood stain with blood or urine<sup>79</sup>.

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<sup>78</sup>Al-Ghazālī, *Iḥyāʾ*. p. 421.

<sup>79</sup>Ibid.

c) The third stage is to prohibit (*nahy*) by giving admonition (*waʿz*) using proper advice (*nuṣḥ*) and by frightening (*takhwīf*) the wrongdoer with God's punishment. The way of giving admonition and frightening with God's punishment is by telling stories that consist of warning (*waʿīd*) and the achievements of the successors (*salaf*) and the pious<sup>80</sup>. This third stage applies to those who commit a wrongful act knowing that it is wrong or continuing to do so after having being informed of the truth. However, the *muḥtasib* should carry out this function with compassion (*shafaqah*) and politeness (*luṭf*) without harshness (*ʿunuf*) or anger (*ghaḍab*). In this case, the *muḥtasib* must view the offender with the eye of respect by sharing the blame for his mistake, as Muslims are regarded as one nation<sup>81</sup>. He must also be aware of his intention to seek God's pleasure and not act out of hypocrisy (*riyāʾ*). This is because the *muḥtasib* who is acting as an informer might intend to show off his knowledge so that he will be admired or to demoralize the offender. In this situation, al-Ghazālī suggests that the *muḥtasib* should exercise *ḥisbah* to himself first by examining his intention, so that it shall be for the purpose of pleasing God and not attaining his own pleasure. In relation to this, the *muḥtasib* needs to remind himself of what God has said to Jesus that he must admonish himself first,

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<sup>80</sup>Ibid.

<sup>81</sup>Ibid.

then his people, or else he should be ashamed to face Him. Also it was reported that Dāwūd al-Ṭā'ī, when asked about someone who visited the rulers to invite them to do good and warn them of their wrongful acts, replied by saying; "He should not fear the rulers' whip (*sawṭ*) or their sword, but should fear a hidden disease (*dā'* <sup>1</sup> *dafīn*) which is pride (*'ujub*)<sup>82</sup>.

d) The fourth stage is to insult (*sabb*) and reprimand (*ta'nīf*) by using harsh words. Here, al-Ghazālī gives an example from the practice of the Prophet Abraham who condemned his people. The Prophet Abraham said to his people as mentioned in the *Qur'ān*; "Fie upon you and upon the things that you worship beside God. Have you no sense"<sup>83</sup>. In this respect, the *muḥtasib* may call the wrongdoer, a sinner (*fāsiq*), stupid (*aḥmaq*) or ignorant (*jāhil*). Al-Ghazālī argues that these words refer to the same meaning, that a sinner is also a fool and ignorant. That is because if he is a sinner, he is also a fool, for if he was not, he would not offend against God<sup>84</sup>. He cannot use obscene language (*fuḥsh*) or what can be interpreted as false accusation (*qadhf*) or fornication. However, in relation to this, there are two manners to be observed by the *muḥtasib*. First, he must not

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<sup>82</sup>Al-Ghazālī, *Iḥyā'*. p. 422.

<sup>83</sup>*Al-Qur'ān*. 21:67.

<sup>84</sup>Al-Ghazālī. op.cit.



use this stage unless the third stage, i.e. giving admonition and proper advice, has not succeeded. Second, he must not lengthen his speech, but restrict himself to what is relevant. In the event of him knowing that his speech is not capable of deterring the wrongdoer, it is unnecessary for him to speak but to express his anger or to humiliate and show his contempt. If he knows that the man, if addressed, will strike but will not do so if he is treated with stern and disapproving looks, then he must be so treated. It is not sufficient to disapprove mentally but to show his anger and his disapproval. Ibn al-Ukhuwwah seems to follow this procedure of al-Ghazālī where he quoted the same wording as him. However, Ibn al-Ukhuwwah referred to this as the third step (*marātib*), not the fourth<sup>85</sup>.

e) The fifth stage is to take an immediate action (*taghyīr bi al-yad*), like destroying a forbidden musical instrument, spilling wine, removing silk clothes and forbidding anyone to sit on silk (i.e. a silk cushion), restraining and preventing someone from acquiring other people's property unlawfully, sending away an unclean person (*junub*) from the mosque and the like. This fifth stage also include the term *ta'zīr fī amwāl* (financial penalty) which has been used by

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<sup>85</sup> Al-Ghazālī, *Iḥyā'*. p. 422. Ibn al-Ukhuwwah, *Ma'ālim*. pp. 195-6. See p. 169 above.

Ibn al-Ukhuwwah<sup>86</sup>. However, this stage is applicable to specific sins, but not to others. In this respect, wrongful acts in relation to speeches and inner sins (*ma<sup>c</sup>ṣiyyat al-qalb*) are excluded. To carry out this action the *muḥtasib* must observe two conditions<sup>87</sup>:

i) that the wrongdoers are not capable of doing it themselves. Therefore, the *muḥtasib* cannot spill the wine or send away unclean persons if they are able to do it themselves,

ii) that the *muḥtasib* must confine his action to what is necessary and what is regarded as appropriate measures. Therefore, if he is able to remove it by hand, he should not use his leg or the other parts of his body, for it is forbidden to intensify the injury (*ziyādat al-<sup>j</sup>adhā fī hi mustaghna<sup>c</sup> anhu*). He should not tear silk clothes or burn the musical instrument, but just break them so that they will become useless. Similarly, in the case of spilling wine, the *muḥtasib* must observe the circumstances, so that he may break the container if it is difficult for him to spill the wine due to the container's small opening or if it will take a long time to do so. However, if the spilling can be easily done without damaging

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<sup>86</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālīm*. pp. 194-5.

<sup>87</sup>Al-Ghazālī, *Iḥyā<sup>j</sup>*. p. 423.

the container, the *muḥtasib* is required for compensation (*ḍamān*), if he breaks it. Regarding the case of breaking vessels containing wine or destroying the properties where wine is served, it is the prerogative of the rulers. Thus, the public is excluded, for it involves legal reasoning for which they are not qualified<sup>88</sup>. The same is mentioned by Ibn al-Ukhuwwah who goes further to explain that it was the former opinion of Shāfi'ī permitting the rulers to impose the fiscal penalty. He then quotes the above passages from al-Ghazālī<sup>89</sup>.

f) The sixth stage is threatening to inflict punishment (*al-taḥdīd wa al-takhwīf*), for example by saying to the wrongdoer, "Stop doing this or I will hit you". Manners that have to be observed here are that he should not threaten them with things that are not lawful. Therefore, he cannot threaten to hit their children or to rape their wives, for these actions are prohibited (*ḥarām*). According to al-Ghazālī, it is permissible for the *muḥtasib* to threaten the wrongdoer, even though he will not impose his threat (*wa'īd*), since not carrying out a threat

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<sup>88</sup>Ibid.

<sup>89</sup>Ibn al-Ukhuwwah, *Ma'ālim*. op.cit.

(*wa<sup>c</sup>īd*) is regarded as noble (*karam*). In contrast, it is bad for someone to break his promise (*wa<sup>c</sup>d*)<sup>90</sup>.

g) The seventh stage is to inflict punishment (*mubāsharat al-ḡarb*) with hand, leg or anything without drawing a weapon. This action may be carried out by the public in emergency cases (*ḡarūrat*) but it is restricted to what is necessary. Thus, he should stop once the wrongful act has been eliminated. The *muḥtasib* should carry out this function step-by-step (*tadriḡ*) and he should know when it is necessary to use weapons. An example of this is that when he sees a sinner grabbing a woman, he should tell him to leave the woman or he will be beaten. However, the *muḥtasib* should not have the intention of killing him, but only of hitting him on his thigh or leg. Al-Ghazālī then cites the opinion of the Mu<sup>c</sup>tazilīs<sup>91</sup> which says that in matters related to the rights of God, *ḡisbah* can only be carried out by the Caliph, so that he may use appropriate language or force. According to them only the Caliph (*imām*) has this authority. In contrast, al-Ghazālī allows the common people to carry

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<sup>90</sup> Al-Ghazālī, *Iḡyā'*, p. 424.

<sup>91</sup> See the struggle between *ahl al-kalām*, the rationalist Mu<sup>c</sup>tazilīs and *ahl al-ḡadīth*, the traditionists. It should be mentioned here, that the former gained political support especially during the ʿAbbāsīd caliphates from the reigns of al-Ma<sup>m</sup>ūn to al-Mutawakkil (from 198/813-232/847). It was then due to the heroic resistance of Aḡmad ibn Ḥanbal (d. 241/855) that the Mu<sup>c</sup>tazilīs's political strength was eliminated. See Makdisi, *Rise*, p. 7.

out this duty, regardless of whether the case belongs to the human's right or God's right<sup>92</sup>.

h) Finally, a situation where the *muḥtasib* is not able to perform his function on his own and he requires the help of his assistants (*ʿawān*). In doing so, the wrongdoers may also gather their aides and as a consequence, a war will break out between the two parties. In these circumstances, according to al-Ghazālī, there are two different points of view on whether the *muḥtasib* should obtain the Caliph's approval prior to his action. Those in favour of obtaining the Caliph's approval argue that the action will lead to devastation and destruction in the country, whilst the other party holds it as a holy war (*jihād*) and if the *muḥtasib* is killed, he will die as a martyr (*shahīd*). According to al-Ghazālī, this is a rare phenomenon. He concludes that whoever is capable of removing a wrongful act, is required to do so with his hand, or weapon, by himself or with assistants, which ever is appropriate<sup>93</sup>.

It should be noted here that there are several different punishments which are found in other *ḥisbah* works but have not been discussed by al-Ghazālī. As indicated by the work of Yaḥyā ibn ʿUmar, these punishments

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<sup>92</sup>Al-Ghazālī, *Iḥyāʾ*. pp. 424-5.

<sup>93</sup>Al-Ghazālī, *Iḥyāʾ*. p. 425.

include returning defected goods, paying compensation, destroying unlawful things such as musical instruments and pots for making *nabīdh*, beating, detention, parading in the market, banning from the market, and confiscating the goods. In some cases, Yaḥyā includes the penalty like rejecting a person testimony which is for the offence of men who do not cover themselves in the public baths<sup>94</sup> and in other occasion he maintains that the vendors who were hoarding during the time of scarcity will be instructed to take out their goods and sell them in the market<sup>95</sup>.

Regarding the penalty of returning the goods it applies to bread insufficient in weight, bitter cucumber, spoiled eggs, mixing meat and clothes infested with lice<sup>96</sup>. As for paying the compensation, it applies to negligence of the miller, mixing the goods, bread unleavened, mixing the milk, mixing oil, missing vendors, damages caused by sprinkling the water, damages caused by digging a pit, money-changing, slaughtering an animal wrongly and loss of wedding outfit and basic house equipment due to negligence<sup>97</sup>. As for destroying unlawful things the penalties apply to the breaking of musical instrument and pots for making *nabīdh*<sup>98</sup>. Regarding

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<sup>94</sup>See p. 121 above.

<sup>95</sup>See p. 129 above.

<sup>96</sup>See pp. 98, 106, 107, 110 and 132 above.

<sup>97</sup>See pp. 90, 98, 100, 123, 124, 133, 135 and 136 above.

<sup>98</sup>See pp. 118 and 120 above.



beating and detention, the penalties seem to be applied to almost all offences. However, on numerous occasions, Yaḥyā held that a warning must be given to the vendors before such an action can be taken against them<sup>99</sup>. The same is the case for the penalty of parading in the market area. As indicated in the work of Yaḥya, the penalty of parading in disgrace would be applied for offences like making counterfeit coins<sup>100</sup> and *ahl al-dhimmah* resembling the Muslim in their attires<sup>101</sup>. Although, these two cases are mentioned, it seems probable that it would include other offences. This because the reason for this penalty is to publicise that such a person cannot be trusted and in order to deter others from committing the same offence<sup>102</sup>. Although banning from the market, is considered more severe than beating<sup>103</sup>, it seems to be one of the most common penalties found in the work of Yaḥyā ibn ʿUmar. Thus, we find the penalty would be applied to the cases of adulteration of weights and measures<sup>104</sup>, price-fixing<sup>105</sup>, mixing the goods<sup>106</sup>, negligence of the bakers who were

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<sup>99</sup>See 80, 95, 97, 100, 105, 108, 110, 121 and 122 above.

<sup>100</sup>See p. 80 above.

<sup>101</sup>See p. 125 above.

<sup>102</sup>Ibn Farḥūn, *Tabṣirat al-Ḥukkām*. p. 202.

<sup>103</sup>See pp. 1001 and 110 above.

<sup>104</sup>See pp. 80, 83 and 84 above.

<sup>105</sup>See pp. 83 and 84 above.

<sup>106</sup>See pp. 95 and 100 above.

making bread that contained stones or was insufficient in weight<sup>107</sup>, mixing of meats<sup>108</sup>, the sale of defected goods<sup>109</sup> and giving short weights and measures<sup>110</sup>. As for confiscating the goods, the penalty applies to a small quantity of oil, milk and bread<sup>111</sup>. This will be made clear in Table 3.1. below.

Table 3.1. **Types penalties according to Yahyā ibn ʿUmar.**

Types of penalties	Types of offences
Returning the goods	Sale of unripe fruit, unleavened bread, bitter cucumber, spoiled eggs, mixing of new oil with the old of the same quality, mixing the meats, sale by a blind person, sale of clothes by a person suffering from leprosy, damaged food in container, clothes infested with lice

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<sup>107</sup>See p. 98 above.

<sup>108</sup>See pp. 110 and 111 above.

<sup>109</sup>See p. 108 above.

<sup>110</sup>See p. 128 above.

<sup>111</sup>See p. 128 above. This is the opinion of Ibn al-Mājjishūn. See also p. 104 above.

Types of penalties	Types of offences
Paying the compensation	Negligence of a miller, mixing the goods, unleavened bread, mixing the milk, damages caused by sprinkling of water, damages caused by digging of pit, loss of money during money-changing, slaughtering an animal wrongly and loss of a wedding outfit due to one's negligence
Destroying the unlawful things	Musical instruments and pots for making a <i>nabādh</i>
Rejecting a person testimony	A man found naked in the public baths
Compelling a person to take out his annual stock and sell it in the market	A vendor who was hoarding foodstuff during the time of scarcity

Types of penalties	Types of offences
Beating	Adulteration of goods, selling unripe fruit, cheating in foodstuff, falsifying the measures, hoarding the foodstuff, immoral behaviour
Being in detention	Making counterfeit coins, cheating in foodstuff, giving short weights and measures, <i>qadhf</i> , young offender (will be detained under the custody of their parent)
Parading in the market	Making counterfeit coins, mixing the meats for a second offence, <i>ahl al-dhimmah</i> resembling the Muslims in attires, hoarding the foodstuff

Types of penalties	Types of offences
Banning from the market	<p>Adulteration of weights and measures, price-fixing, sale of unripe fruit, sale of bread contains stones, mixing the wheat, mixing the meats for a second offence, blowing into carcasses, sale of a shrunken clothes, cheating in weights and measures, mixing the good quality of food with the lesser, mixing the goods, negligence of the bakers who were making bread that contained stones or was insufficient in weight, mixing the meats, the sale of defected goods and giving short weights and measures.</p>

Types of penalties	Types of offences
Confiscating the goods	<p>Figs rubbed with oil, milk when water was added to it, bread insufficient in weight, sale of unripe fruit, mixing of oil of different quality, missing vendors (sell their goods and the money will be given to the treasury), sale of bread contains stones, Hoarding foodstuff, adulteration of saffron and musk (This is the opinion of Mālik and was adopted by Yaḥyā ibn ʿUmar. However, Ibn Mājishūn held that adulteration of goods of nominal value, such as bread and milk will only be confiscated).</p>

According to al-Ghazālī, the manners that had to be observed by the *muḥtasib* which he has mentioned in discussing the stages of *ḥisbah*, originated from the *muḥtasib*'s own character, namely; knowledge (*ʿilm*),



piety (*waraʿ*) and honourable personality (*ḥuṣn al-khulq*). Al-Ghazālī holds that knowledge is important, so that the *muḥtasib* will be able to know the subject of *ḥisbah* and its limitation in order to restrict himself to what is lawful according to the revealed law<sup>112</sup>. As for being pious, al-Ghazālī maintains that it aims to prevent the *muḥtasib* from indulging in matters beyond his power and to eliminate his personal inclination and self-indulgence<sup>113</sup>. However al-Ghazālī argues that having a knowledge and being pious are not sufficient, as these two cannot control his anger and feeling. Thus, it is necessary for him to have an honourable character, so that he will be able to perform the function of *ḥisbah* with compassion<sup>114</sup>. Similarly, we find Ibn Taymiyyah holds that the person performing this duty must have three elements: knowledge (*ʿilm*), gentleness (*rifq*) and patience (*ṣabr*)<sup>115</sup>. Al-Ghazālī argues that these three characters must exist in a *muḥtasib*, for the lack of them could turn his performance into a wrongful act (*munkar*). He then gives examples from the Prophet's tradition and the practice of his predecessors. Among other things, he cites a case of Ibn ʿĀʾishah<sup>116</sup>, who saw a drunk young man from Quraysh grabbing a

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<sup>112</sup>Al-Ghazālī, *Iḥyāʾ*. p. 425.

<sup>113</sup>Ibid.

<sup>114</sup>Al-Ghazālī, *Iḥyāʾ*. pp. 425-6.

<sup>115</sup>Ibn Taymiyyah, *al-Ḥisbah*. pp. 84-5. See also transl. p. 88. See also p. 32 above.

<sup>116</sup>Abū ʿAbd al-Raḥmān ʿAbd Allāh ibn Muḥammad (d. 228/842-3) was generally known as Ibn ʿĀʾishah, because he was the son of ʿĀʾishah, the daughter of Ṭalḥah ibn ʿUbayd Allāh al-Taymī, one of the Prophet's principal Companions and who was slain at the Battle of the Camel (36/656). He was a traditionist and a transmitter of historical and literary information.

woman. Upon hearing the cries of the woman, the people gathered around and beat the young man. Then, Ibn ʿĀʾishah spoke loudly "Go away and leave my nephew", and said "Bring him to me". He then took the young man to his house and informed him of his wrongful action after he regained his consciousness. The young man felt ashamed of himself and cried. He then promised to Ibn ʿĀʾishah that he would not continue in his bad habit. According to al-Ghazālī the young man then became Ibn ʿĀʾishah's student and wrote the Prophet's traditions from him<sup>117</sup>.

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It was at Baghdād that he gave lessons. He was a great believer that the *Qurʾān* was not created for it is said that he was severely flogged by the order of the Caliph al-Maʾmūn. An incident which happened to him whilst undergoing this punishment gave the reprobate poet Abū Nuwās, the idea of composing on his misadventure a piece of verse. He died in 228/842-3. Ibn Khallikān transl. vol iv, p. 258, ft 1. However Ch. Pellat seems to refer him to his father, (See Muḥammad ibn Ḥafṣ al-Taymī) who according to al-Isbahānī was the *qāḍī* of Basrah. Isbahānī, *Aghānī*. xviii, p. 4. It is also said that his father was a genealogist, collector of traditions and wit of Baṣrah, who owes his by-name Ibn ʿĀʾishah (*al-Akbar*) to ʿĀʾishah bint Ṭalḥah ibn ʿUbayd Allāh al-Taymī, from whom he was descended. Ch. Pellat, *EI*(1). 3:698. He should also not to be mistaken with another popular Medinan singer of the Umayyad period who was also known as Ibn ʿĀʾishah. See Abū Jaʿfar Muḥammad Ibn ʿĀʾishah (d. 100/718). Fuat Sezgin, i, p. 813. Al-Ziriklī, *al-Aʿlām*. 7: 48. See also Dr. D. Salloum. *Shakhṣiyyāt Kitāb al-Aghānī*. Baghdad, 1982 pp. 345-6. Isbahānī, *Aghānī*. ii, p. 62.

<sup>117</sup>Al-Ghazālī, *Iḥyāʾ*. pp. 427-8.

## CHAPTER FOUR

### The duties of the *muḥtasib*

#### 4.0. Introduction

Al-Māwardī and Ibn al-Farrā' maintain that the duties of the *muḥtasib* consist of two elements: enjoining what is right (*al-amr bi al-ma'rūf*) and forbidding what is wrong (*al-nahy 'an al-munkar*). These two elements are then divided into three categories: matters involving the rights of God (*ḥuqūq Allāh*), matters concerning the rights of men (*ḥuqūq al-'ibād*) and matters dealing with both rights of God and men<sup>1</sup>. Matters involving the rights of God include three kinds: the acts of worship and prohibited acts<sup>2</sup>. It should be noted here that the rights of God are defined as those matters which aim to increase spiritual consciousness of God's supremacy so that the believer would worship Him and obey and preserve His law. The rights of God also include the performance of certain obligations which are for the benefit of the public, such as the obligation of *jihād*. These rights of God cannot be invalidated<sup>3</sup>. On the other hand, according to al-Māwardī

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<sup>1</sup>Al-Māwardī, *Aḥkām*. pp. 243, 247. Ibn al-Farrā', *Aḥkām*. pp. 271, 275.

<sup>2</sup>Al-Māwardī, *Aḥkām*. pp. 243-5, 247-254. Ibn al-Farrā', *Aḥkām*. pp. 271-3, 276-283.

<sup>3</sup>*Wahbah*. 4: 13.

and Ibn al-Farrā' matters concerning the rights of men include the maintenance of public utilities, conduct between neighbours and supervision over the skill of medical practitioners and teachers, the honesty of certain economic occupations and the quality of the work of craftsmen<sup>4</sup>. The rights of men are defined as those matters which are for the benefit of mankind, whether they involved the interest of the public or a particular person. These rights can be invalidated<sup>5</sup>. Matters that involved both rights of God and men include law of waiting period for a divorcee, law of maintenance involving a reluctant father, maintenance of slaves, care towards animals, foundlings, stray animals and *ahl al-dhimma*, castration of human beings and animals, dyeing of hair, fortune-telling and the like<sup>6</sup>. Ibn al-Ukhuwwah divides the duties of the *muḥtasib* in the same way, that is by classifying them into the rights of God, the rights of men and the rights of both of God and men<sup>7</sup>. After copying the work of al-Māwardī with some variances and comments, Ibn al-Ukhuwwah then expanded his work by including additional duties which in fact mostly derived from the work of al-Shayzarī<sup>8</sup>. Meanwhile, al-Ghazālī deals with the matter by discussing various wrongful acts and dividing them according to places such as the

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<sup>4</sup>Al-Māwardī, *Aḥkām*. pp. 245-7, 255-6. Ibn al-Farrā', *Aḥkām*. pp. 273-5, 284-6.

<sup>5</sup>*Wahbah*. 4: 14.

<sup>6</sup>Al-Māwardī, *Aḥkām*. pp. 247, 256-8. Ibn al-Farrā', *Aḥkām*. pp. 275, 287-292.

<sup>7</sup>Ibn al-Ukhuwwah, *Ma'ālim*. pp. 22, 27.

<sup>8</sup>See previous discussion in the Introduction pp. 28, 29.

mosque, the market, the street, the public baths, public accommodations and the like<sup>9</sup>. However, al-Ghazālī has omitted some of the duties which have been discussed by al-Māwardī and Ibn al-Farrā' such as those matters concerning the supervision of medical practitioners and management of the city. In fact, in this way the authors of *ḥisbah* literature discuss the duties of the *muḥtasib* by mentioning various aspects of life without categorizing them. Thus, despite the above classifications made by the medieval Muslim scholars which seem to be rather ambiguous, they would perhaps agree that the duties of the *muḥtasib* can be divided - in the way which we have discussed in earlier chapters<sup>10</sup> - into four categories: to supervise various kinds of economic activities in the market, to observe matters relating to moral and religious behaviour, to inspect health professions and to administer the municipal control of the city.

#### 4.1. The duty to supervise the market

Market supervision had been the most important duty of the *muḥtasib*. Thus, almost all *ḥisbah* literature covers matters mostly related to economic activities in the market, except for the work *Nisāb al-Iḥtisāb* of al-Sunāmī which is concerned mainly with wrongful moral and religious

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<sup>9</sup>Al-Ghazālī, *Iḥyā'*. pp. 428-436.

<sup>10</sup>See previous discussion in Chapter One pp. 75-6 and in Chapter Three p. 168.

behaviours<sup>11</sup>. In this manner, we find the work of Yaḥyā ibn ʿUmar and other *ḥisbah* literature make market supervision the main focus of their attention. Thus, the titles of the work of Yaḥyā ibn ʿUmar, i.e. *Kitāb Aḥkām al-Sūq* and *Kitāb al-Nazar wa al-Aḥkām fī Jamīʿ Aḥwāl al-Sūq*, suggest that the work deals with the duty of market supervision. This role is also considered as the most well-established duty of the *muḥtasib*. As we have discussed earlier, the institution of *muḥtasib* was a transformation of the previous office of *ʿāmil ʿalā al-sūq* and *ṣāḥib al-sūq*, whose major duties were concerned with the supervision of the market and this is evident in the work of Yaḥyā ibn ʿUmar<sup>12</sup>. In the same way, al-Māwardī maintains that the main duty of the *muḥtasib* (*ʿumdat naẓarihi*) is to prevent any deficiency in weights and measures because this has been warned against by God<sup>13</sup>. Similarly, Ibn al-Farrāʾ regards the responsibility to control the use of correct weights and measures as a necessary duty of the *muḥtasib*<sup>14</sup>. In this way it seems that the duty of the *muḥtasib* to supervise the market involves many aspects but can be classified in three categories: firstly, the *muḥtasib* has to deal with the problem of price-fixing; secondly, he must control the use of correct weights and measures; and thirdly he has to supervise various kinds of economic occupations so that

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<sup>11</sup>See previous discussion on the Introduction p. 30.

<sup>12</sup>See previous discussion in the Introduction pp. 9-10.

<sup>13</sup>Al-Māwardī, *Aḥkām*. p. 254. See *al-Qurʾān* 83:1-5. See also Bukhārī, *Ṣaḥīḥ*. vol 3, p. 191.

<sup>14</sup>Ibn al-Farrāʾ, *Aḥkām*. p. 283.



the public will be safeguarded against cheating, adulteration of the goods and negligence of the vendors.

#### 4.1.1. The duty to supervise the price of the goods

As we have mentioned in previous discussions, the jurists disagree on this matter, where the Shāfi'īs and the Ḥanafīs disallow the practice of fixing prices, while the Mālikīs and the Ḥanbalīs permit it<sup>15</sup>. However, we find that the authors of *ḥisbah* literature who belong to these schools of law agree in making the *muḥtasib* liable to supervise the prices of the goods sold in the market.

In this way, Yaḥyā ibn 'Umar, a Mālikī jurist, holds that it is unjust to allow a vendor to sell his goods cheaper than the market price which will annoy other vendors and cause disturbances and destruction of the market. In this case, Yaḥyā maintains that the vendor should be ordered to increase his price or leave the market. At this stage the matter was the responsibility of *ṣāḥib al-sūq*, the *qāḍī* and the Governor. However, later it became the duty of the *muḥtasib*<sup>16</sup>. In this manner, al-Nāṣir li al-Ḥaqq, a Zaydī Imām of Āmul, holds that price-fixing is not permissible and he

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<sup>15</sup>See previous discussions in Chapter Two p. 139

<sup>16</sup>Yaḥyā ibn 'Umar, *The text (first)*. pp. 106-8. *The text (second)*. pp. 40-7. See also previous discussion in Introduction p. 10 and in Chapter Two pp. 141-2.

asserts that the matter is unanimously agreed upon by the jurists of his school of law (*‘ulamā’ ahl al-bayt*). Al-Nāṣir maintains that in relation to this in the situation where the goods are in demand, the *muḥtasib* is liable to ensure that the vendors will not hoard them<sup>17</sup>. Al-Māwardī who was a Shāfi‘ī jurist seems to agree with the statement of al-Nāṣir li al-Ḥaqq in disallowing the *muḥtasib* to fix the prices of goods sold in the market<sup>18</sup>. Although al-Sunāmī does not mention price-fixing, perhaps he would agree with the statement of al-Shaybānī that Abū Ḥanīfah and the Ḥanafīs disallow fixing the price<sup>19</sup>. On the other hands, Ibn Taymiyyah, a Ḥanbalī jurist, argues that the Prophet had refused to fix the price when it was increased because it would be unjust to the vendors. However, in a situation where the price had increased due to injustice of the vendors who refused to sell their goods except by increasing the price and had caused inconveniences to the public when there was a demand for the goods, an equivalent price (*qīmat al-mithl*) will be imposed on them. In this manner, his disciple, Ibn Qayyim al-Jawziyyah referred to the opinion of Ibn Ḥabīb, a Mālikī jurist, that a settlement for an equivalent price can be achieved through negotiation between the vendors and the public<sup>20</sup>.

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<sup>17</sup> Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 14.

<sup>18</sup> Al-Māwardī, *Aḥkam*. p. 256.

<sup>19</sup> See al-Shaybānī's statement in Mālik ibn Anas, *Muwatta’* (riw. al-Shaybānī). p. 279.

<sup>20</sup> Ibn ‘Abd al-Ra’ūf, *Risālah*. pp. 88-9. Ibn Taymiyyah, *al-Ḥisbah*. p. 24. Ibn Qayyim, *al-Ṭuruq*. p. 265. See also previous discussion in Chapter Two pp. 140-1.

#### 4.1.2. The duty to supervise the use of correct weights and measures

According to Yaḥyā ibn ʿUmar, an official appointed by the Governor should observe the market and carry out tests to determine the use of correct weights and measures<sup>21</sup>. Although Yaḥyā does not clearly indicate the title of the official appointed, he held that the matter was the responsibility of the Governor, the *qāḍī* and *nāẓir ʿalā al-sūq*<sup>22</sup>. However, later the *muḥtasib* became in charge of this duty. In this way, al-Nāṣir li al-Ḥaqq maintains that the vendors should only be allowed to sell their goods by using weights (*arṭāl*) made of steel. The weights and measures should also be stamped with a seal. Al-Nāṣir then held that the *muḥtasib* should carry out a through inspection in the market to ensure that the above matters are implemented<sup>23</sup>.

As mentioned earlier, al-Māwardī and Ibn al-Farrā' hold that deficiency in weights and measures was the *muḥtasib*'s main concern<sup>24</sup>. Al-Ghazālī also discussed the matter and he holds that the public should also be involved by asking the vendors to adjust the scales, or by informing

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<sup>21</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 103. *The text (second)*. p. 33. See also previous discussion in Chapter Two. pp. 76-7.

<sup>22</sup>Yaḥyā ibn ʿUmar, *The text (second)*. p. 47.

<sup>23</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. pp. 13-4.

<sup>24</sup>Al-Māwardī, *Aḥkām*. p. 254. Ibn al-Farrā', *Aḥkām*. p. 283.

the authorities<sup>25</sup>. Al-Māwardī argues that the punishment for giving deficient weights and measures should be severe because the matter has been warned against by the *Qurʾān*<sup>26</sup>. One that basis, when the *muḥtasib* is in doubt about the accuracy of weights and measures, he should test them. Al-Māwardī then suggests that it would be beneficial for him to mark the correct weights and measures with a seal which is well known to the public as this will provide more protection. Thus, in the case where unmarked weights and measures are used by the vendors, they could be condemned for two reasons:

a) that the vendors had refused to use the sealed weights and measures and that their practice is contrary to that of the authorities,

b) that the vendors had opposed the revealed law by giving deficient weights and measures.

In the case where the unmarked weights and measures are correct, then the *muḥtasib*'s denunciation should be for the first reason only<sup>27</sup>. As for someone who falsifies (*tazwīr*) his seal, he should be treated the same as those who counterfeit money. In this way, Ibn al-Farrā' mentions the

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<sup>25</sup>Al-Ghazālī, *Iḥyā'*. p. 432.

<sup>26</sup>Al-Māwardī, op.cit. *Al-Qurʾān*. 83: 1-5.

<sup>27</sup>Al-Māwardī, *Aḥkām*. p. 254.

opinion of Aḥmad ibn Ḥanbal that minting of money is not permissible unless sanctioned by the ruler<sup>28</sup>. If the falsification entails cheating in selling, the *muḥtasib* should denounce it on both grounds stated above<sup>29</sup>.

In this manner, al-Saqatī holds that it is the responsibility of the *muḥtasib* to mark the measures and weights, as well as the weight containers, with a seal known to the public. In relation to the sale of bread, the *muḥtasib* has to ensure that the bakers have their own seal with their names on it and stamp it on their bread, in order to differentiate each one of them so that it will be a proof for their owners<sup>30</sup>.

Although Yaḥyā ibn ʿUmar regards the duty to supervise the use of standard weights and measures as the responsibility of the Governor, he also maintains that the Governor should appoint the most trusted person in his city to enforce the use of standard weights and measures. The appointed person should then punish those who falsify the official weights and measures<sup>31</sup>. In this way, according to al-Māwardī, when the population grows and there is a need for official testers for measures (*kayyālīn*), scales (*wazzānīn*) and coins (*naqqādīn*), the *muḥtasib* should

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<sup>28</sup>Ibn al-Farrāʾ, *Aḥkām*. p. 283.

<sup>29</sup>Al-Māwardī. op.cit. Ibn al-Farrāʾ. Ibid.

<sup>30</sup>Al-Saqatī, *al-Ḥisbah*. p. 10.

<sup>31</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 103. *The text (second)*. p. 33. See previous discussion in Chapter Two pp. 79-80.

only appoint those who are trustworthy and reliable<sup>32</sup>. Al-Māwardī also suggests that the official testers should receive salaries from the treasury (*bayt al-māl*). If the fund is inadequate, they will share the amount that is available between them equally, in order to deter them from any partiality and injustice while carrying out their duties in dealing with weights and measures. On some occasions, the official testers were selected and appointed by the rulers (*umarā'*) themselves, and their names are recorded in the register books (*dawāwīn*) so that they will not be confused with other persons who cannot be trusted. Those testers who deal unjustly (*ḥayf*) or are involved in deficiency (*taṭfīf*) will be dismissed and shall be prohibited from taking any part in dealing with the people's transactions<sup>33</sup>. The same rule applies to the selection of brokers (*dallālīn*) where the *muḥtasib* has to ensure that only those who are trustworthy should be appointed<sup>34</sup>.

Al-Māwardī maintains that the duty to appoint the official testers and the brokers is to be governed by the *muḥtasib*, if the matters had not been dealt with by the rulers (*umarā'*)<sup>35</sup>. As for the selection of valuers for the purpose of partition between those entitled (*qassām*) and of surveyors (*zurra'*), the duty lies with the *qāḍī* rather than the *muḥtasib*, because they

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<sup>32</sup>Al-Māwardī, *Aḥkām*. p. 254.

<sup>33</sup>Al-Māwardī. Ibid. However, Ibn al-Farrā' omits this. Ibn al-Farrā'. op.cit.

<sup>34</sup>Al-Māwardī. loc.cit.

<sup>35</sup>However, Ibn al-Farrā' omits the latter injunction. Al-Māwardī. Ibid.



might be dealing with the property of the orphan and the absent owner (*ghā'ib*). However, it is the duty of the police (*ḥumāh* and *aṣḥāb mu'āwin*) to select the watchmen (*ḥurrās*) for the tribes and the markets<sup>36</sup>.

According to al-Māwardī, the *muḥtasib* may deal with cases between individuals involving deficiency in weights and measures as long as there is no dispute, for then, the case will be decided by the *qāḍī*, whilst the *muḥtasib*'s duty is to impose the punishment (*ta'dīb*)<sup>37</sup>. In the case of the measures being unusual to the town's inhabitants, though they are known to other communities, the *muḥtasib* can denounce them, when they involve the general public. However, if the two parties involved have agreed on using those measures, he must not interfere with them<sup>38</sup>.

#### 4.1.3. The duty to supervise various kinds of economic occupations

The discussions on this matter involve numerous economic occupations, and as a result we find a large section of *ḥisbah* works normally occupied by it. In this manner, Yaḥyā ibn 'Umar discusses these matters in many chapters. In the first text, the discussions are from chapter five to chapter thirty, and from chapter forty to chapter fifty seven, except

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<sup>36</sup> Al-Māwardī, *Aḥkām*. p. 254.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

for chapters fifty four and fifty five. In the second text, the discussions are from chapter four to chapter nineteen, and from chapter thirty one to chapter forty four<sup>39</sup>. Even though the discussions on this matter involve many aspects, there seem to be two main functions of these supervisions: firstly to ensure that Islamic law is observed by eradicating unlawful sale transactions; and secondly to protect the interest of the public by investigating the adulteration of goods, and cheating and negligence by the vendors.

#### 4.1.3.1. The duty to prevent unlawful sale transactions

According to al-Māwardī, prohibited commercial transactions can be found in numerous cases, such as in the case of usury (*ribā*)<sup>40</sup>. In this way al-Saqāṭī refers to a tradition of the Prophet cursing those who take usurious interest, who give it, who draw up its contract and those who are witness of it. The Prophet then said: "They are all equal". On another occasion, the Prophet was reported as saying: "Usury will lessen (spiritual gain), although it increases (material profit)"<sup>41</sup>. Al-Māwardī held that

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<sup>39</sup>See previous discussion in Chapter One pp. 54-5. See also Table 1.1. pp. 58-69.

<sup>40</sup>Perhaps the correct reading of al-Māwardī is *ribā* not *zinā* because Ibn al-Ukhuwwah has referred to it as *ribā*. However, Ibn al-Farrā' seems to omit this and he refers to it as *shirā'* (commercial transaction). Amedroz also suggests that the correct reading should be *ribā* and he refers to what is found in 1,6. B.M. Or. 3117. Amedroz, *JRAS*. p. 93. Al-Māwardī, *Aḥkām*. p. 253. Ibn al-Farrā', *Aḥkām*. p. 282. Ibn al-Ukhuwwah, *Ma'ālim*. p. 52.

<sup>41</sup>Al-Saqāṭī, *al-Ḥisbah*. p. 5. See Aḥmad ibn Ḥanbal, *Musnad*. vol. 1. pp. 395, 424.

other unlawful practices include invalid sales (*al-buyu<sup>c</sup> al-fāsidah*) and those which have been prohibited by the revealed law, even though the purchaser and the vendor have approved of them<sup>42</sup>. In this way al-Māwardī maintains that the *muḥtasib* should forbid the contract of *taṣriyah*<sup>43</sup> because it is prohibited by law for it is regarded as a kind of cheating (*tadlīs*)<sup>44</sup>. The same was the opinion of al-Saqatī and he regards the contract as unlawful<sup>45</sup>. In fact, al-Saqatī has mentioned various kinds of unlawful contracts prohibited by the Prophet which are as follows<sup>46</sup>:

a) The Prophet forbids the sale of food before it is ready<sup>47</sup>.

b) The Prophet forbids two contracts for one sale which can be found in two situations: firstly when someone asks another person to purchase something on his behalf and he purchases that commodity from that person with a delayed payment; secondly when someone

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<sup>42</sup>Al-Māwardī, *Aḥkām*. p. 253.

<sup>43</sup>A sale transaction of an animal by allowing the milk to accumulate in the udder, so that the potential purchaser will think that the animal produces plenty of milk and that the vendor could ask for a higher price. *Mu<sup>c</sup>jam Lughat al-Fuqahā'*. p. 132. In this case, the purchaser has an option to return the animal, but he must pay the vendor one ṣa<sup>c</sup> (a cubit measure. *Hans Wehr*. p. 530) of dates if he had taken some milk from the animal. Bukhārī, *Ṣaḥīḥ*. vol 3, pp. 200-3. Muslim, *Ṣaḥīḥ*. vol 9, pp. 158-162. Ibn Qudāmah, *al-Mughnī*. 7:234.

<sup>44</sup>Al-Māwardī. op.cit. Ibn al-Farrā', *Aḥkām*. p. 283.

<sup>45</sup>Al-Saqatī, *al-Ḥisbah*. p. 4.

<sup>46</sup>Al-Saqatī, *al-Ḥisbah*. p. 4.

<sup>47</sup>Mālik ibn Anas, *Muwatta'a'*, (riw. *al-Laythī*). p. 538. Al-Saqatī. Ibid.

sells his goods with two optional prices or two optional items. As for example, a seller says, "I sell you this cloth for the price of 10 or 15 *dirhams*" or "I sell you one of these two garments"<sup>48</sup>.

c) The Prophet forbids the sale of a postponed debt. As for example someone purchases something with a delayed payment for a certain period and he cannot pay his debt by the given date. So he says: "Buy this from me for an added period with an added amount"<sup>49</sup>.

d) The Prophet forbids a sale of meat in exchange for an animal, that is, to sell dead meat in exchange for a living animal<sup>50</sup>. However, the sale is allowed when they are of the same type and on condition that they are similar in weight and exchanged immediately without delay<sup>51</sup>.

e) Al-Saqatī held that the selling of a dog is unlawful by virtue of the tradition of the Prophet<sup>52</sup>. It is reported that the Prophet forbade

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<sup>48</sup>Mālik ibn Anas, *Muwatṭa'* (riw. *al-Laythī*). pp. 553-4. *Muwatṭa'* (riw. *al-Suyūṭī*). vol. 2, pp. 74-5. Al-Saqatī, loc.cit.

<sup>49</sup>*Mu'jam Lughat al-Fuqahā'*. p. 375. *Wahbah*. 4: 504. Al-Saqatī, loc.cit.

<sup>50</sup>Mālik ibn Anas, *Muwatṭa'* (riw. *al-Laythī*). p. 547. *Muwatṭa'* (riw. *al-Shaybānī*). p. 276. *Muwatṭa'* (riw. *al-Suyūṭī*). vol. 2, p. 70. Ibn Qudāmah, *al-Mughnī*. 7: 37-8.

<sup>51</sup>Mālik ibn Anas, *Muwatṭa'* (riw. *al-Laythī*). pp. 547-8. *Muwatṭa'* (riw. *al-Suyūṭī*). p. 71.

<sup>52</sup>Al-Saqatī, *al-Ḥisbah*. p. 4..

the sale price for a dog<sup>53</sup>. However, Abu Ḥanīfah sanctions this sale transaction<sup>54</sup>.

f) The Prophet forbids a person to bargain for goods which another has agreed to buy, until the latter has bought or withdrawn. He also forbids the contract of *al-najsh* that is to bargain for a raise in price without an intention of buying<sup>55</sup>.

g) The Prophet forbids a person to buy from someone who has not reached the market because the latter does not know the current market price and he forbids a townsman to sell on behalf of the nomads<sup>56</sup>.

h) The Prophet forbids the contract of *al-muzābanah*, that is a sale of dried dates in exchange for fresh dates hanging on trees, selling fresh grapes for dried grapes or raisins, selling wheat in field for

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<sup>53</sup>Mālik ibn Anas, *Muwatṭaʾ* (riw. *al-Laythī*). p. 548. *Muwatṭaʾ* (riw. *al-Suyūṭī*). vol. 2, p. 71.

<sup>54</sup>See Ibn Qudāmah, *al-Mughnī*. 7: 278.

<sup>55</sup>Mālik ibn Anas, *Muwatṭaʾ* (riw. *al-Laythī*). p. 569. See transl. p. 307. *Muʿjam Lughat al-Fuqahāʾ*. p. 475.

<sup>56</sup>Mālik ibn Anas, *Muwatṭaʾ* (riw. *al-Laythī*). loc.cit. Muslim, *Ṣaḥīḥ*. vol. 9, p. 163. *Subul al-Salām*. vol. 3, p. 20. *Nayl al-Awṭār*. vol. 5, p. 164. Ibn Qudāmah, *al-Mughnī*. 7: 241-3. *Muʿjam Lughat al-Fuqahāʾ*. p. 145. *Wahbah*. 4: 239.

dried wheat, selling cooked green wheat for dried wheat and selling wet wheat for dried wheat<sup>57</sup>.

i) The Prophet forbids selling fruit until it is ripe<sup>58</sup>. He also forbids selling wool on the back of an animal and milk in the udder<sup>59</sup>.

j) The Prophet forbids *al-muḥāqalah* and *al-mukhābarah* that is a contract of renting land together with its product<sup>60</sup>.

k) The Prophet said: "A sale of *al-muḥaffalāt* is cheating, and it is not permissible for a Muslim to cheat another Muslim"<sup>61</sup>. It should be noted here that the term *al-muḥaffalāt* is also used to mean a sale by keeping an animal un milked for a long time to cheat the potential buyer. However, as we have mentioned earlier this contract is commonly known as *al-taṣriyah*<sup>62</sup>.

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<sup>57</sup>Mālik ibn Anas, *Muwatṭa'* (riw. *al-Laythī*). p. 521. See transl. p. 288. *Muwatṭa'* (riw. *al-Suyūṭī*). vol. 2, pp. 54-5. Muslim, *Ṣaḥīḥ*. vol. 9, pp. 192-3. Ibn Qudāmah, *al-Mughnī*. 4: 16.

<sup>58</sup>Mālik ibn Anas, *Muwatṭa'* (riw. *al-Laythī*). p. 517.

<sup>59</sup>Muslim, *Ṣaḥīḥ*. vol. 9, pp. 193-4.

<sup>60</sup>Mālik ibn Anas, *Muwatṭa'* (riw. *al-Laythī*). pp. 521-2. *Muwatṭa'* (riw. *al-Suyūṭī*). vol. 2, pp. 54-5. Muslim, *Ṣaḥīḥ*. vol. 9, pp. 192-3.

<sup>61</sup>Al-Saqatī, *al-Ḥisbah*. p. 5.

<sup>62</sup>Ibn Mājah, *Sunan*. vol. 2, chapter 42, *Kitāb al-Tijārah*, *hadīth* num. 2241.



**4.1.3.2. The duty to protect the public from adulteration of goods, and cheating and negligence by the vendors**

The *muhtasib* was not only concerned with denouncing unlawful sale transactions. We find that he took measures to protect the public from being victimized by the greedy vendors. In this way al-Māwardī and Ibn al-Farrā' hold that the other matters to be included as prohibited commercial transactions are frauds on items sold (*ghash mabī'āt*) and cheating on price<sup>63</sup>. In this respect they held that the Prophet is reported as saying, "He who cheats is not one of us"<sup>64</sup>. Al-Māwardī and Ibn al-Farrā' argue that if the cheating was done without the purchaser's knowledge, the offence is grave, and thus the *muhtasib*'s denunciation and the penalty for it would be more severe. On the other hand, if the purchaser knows about the cheating, then the gravity of the offence is less and the *muhtasib*'s denunciation would be less severe. The *muhtasib* must also investigate the intention of a person who bought an adulterated commodity, because he might sell it and cheat another person who is not aware of it, which should be denounced. However, if it is for his own use, only the vendor is liable to be denounced. The same is the case with cheating in price<sup>65</sup>.

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<sup>63</sup>Al-Māwardī, *Aḥkām*. p. 253. Ibn al-Farrā', *Aḥkām*. p. 281.

<sup>64</sup>Al-Tirmidhī, *Sunan*. vol 3, p. 597. Ibn Mājah, *Sunan*. vol 2, p. 729.

<sup>65</sup>Al-Māwardī. op.cit. Ibn al-Farrā', *Aḥkām*. p. 282.

Similarly, al-Ghazālī holds that among the most common wrongful acts in the market place are cheating on the price and hiding defects. Thus, someone who knows about these wrongful acts should inform the purchaser, lest he might be considered as an associate, which is forbidden by law<sup>66</sup>.

In relation to this, according to al-Māwardī and Ibn al-Farrā', there are three kinds of professions that the *muḥtasib* must supervise with regard to skill (*ufūr*), honesty (*amānah*) and quality of work. The first includes the medical practitioners (*aṭibbā'*) and the teachers (*mu'allimūn*)<sup>67</sup>. The second are those vendors whose occupations depend on their honesty and trustworthiness which includes the goldsmiths (*ṣāghah*), weavers (*ḥākah*), fullers (*qaṣṣārūn*) and dyers (*ṣabbāghūn*). The third are the craftsmen who can be considered as having a good or bad quality of work<sup>68</sup>. We will discuss the second and the third kinds of professions in this section, while the first profession will be dealt with in subsequent chapters.

As for the second group, al-Māwardī and Ibn al-Farrā' argue that the *muḥtasib* is entitled to supervise them because they might have taken people's property unlawfully. Therefore, the *muḥtasib* should only allow those who are honest and he has to forbid the dishonest and proclaim their

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<sup>66</sup>Al-Ghazālī, *Iḥyā'*. p. 432.

<sup>67</sup>However, Amedroz refers to them as the students. Amedroz, *JRAS*. p. 97.

<sup>68</sup>Al-Māwardī, *Aḥkām*. p. 256. Ibn al-Farrā', *Aḥkām*. p. 286.

deceit. On the other hand, al-Māwardī had referred to one opinion which claimed that the matter is the responsibility of the police (*ḥumāh* and *aṣḥāb al-mu<sup>c</sup>āwin*), rather than the *muḥtasib*, because dishonesty may lead to thievery<sup>69</sup>. However, Ibn al-Ukhuwwah seems to reject this opinion and he includes the above mentioned economic occupations under the supervision of the *muḥtasib*<sup>70</sup>.

As for the duty to supervise the third kind of professions who are the craftsmen whose works could be considered as having a good or bad quality, al-Māwardī held that it is the specific function of the *muḥtasib*. Although al-Māwardī does not specify any kind of craftsmen, presumably it would involve almost all kinds of craft occupations such as manufacturers of foodstuffs, clothing and receptacles of various kinds, carpenters and the like. We find this matter had been dealt with by Ibn al-Ukhuwwah<sup>71</sup>. In these cases, the *muḥtasib* should inspect the quality of their work and denounce those vendors who have provided a bad quality of production. In other words, the *muḥtasib* has to set a certain standard of work in order for him to decide in each case. In doing so, he was assisted by the head of a guild. As we have mentioned earlier in the Introduction, the *muḥtasib* was

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<sup>69</sup>Al-Māwardī. loc.cit.

<sup>70</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 144-7 (goldsmiths), 136-7 (weavers), 137-140 (tailors, repairers, fullers and *qalansuwah* makers) and 141-2 (dyers).

<sup>71</sup>On foodstuffs see Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 89-115. On clothing see Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 136-143, 144-7. On receptacles see Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 222-4. On carpenters see Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 234-7.

assisted by the head of a guild who was known as *‘arīf* in the East and *amīn* in the West<sup>72</sup>. In this way, al-Saqaṭī held that it is necessary for the *muḥtasib* to appoint an *amīn* to assist him<sup>73</sup>. On the other hands, al-Shayzarī holds that the official appointed was known as *‘arīf*<sup>74</sup>. Al-Saqaṭī then explained by saying that a person who is well-known for his trustworthiness will be appointed as an *amīn* for one of the corporations. He is selected from the trustworthy and the honourable artisans, from whom the Muslims took benefit from his advice and knowledge. The official appointed should also caution the Muslims to protect them from wicked vendors<sup>75</sup>. In this way, al-Saqaṭī maintains that the Muslims could gain information from him about the vendors and the artisans’ secret thoughts. As a result, al-Saqaṭī holds that the vendors’ evil character will be revealed and their cunning will be stopped so that their damage upon the Muslims will be removed<sup>76</sup>.

In this way, al-Saqaṭī suggests that the *muḥtasib* should inspect from time to time the conduct of his men and he should not appoint one of them on a specific matter, for instance to take a weight of a bread from the

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<sup>72</sup>See previous discussion in the Introduction p. 7.

<sup>73</sup>Al-Saqaṭī, *al-Ḥisbah*. p. 5.

<sup>74</sup>Al-Shayzarī, *Nihāyah*. p. 12.

<sup>75</sup>Al-Saqaṭī. op.cit.

<sup>76</sup>Ibid.

bread-seller, because he would be exposing his assistant to the possibility of bribery. In relation to this, al-Saqaṭī holds that the *muḥtasib*'s subordinates should never know the time the *muḥtasib* goes out for inspection because such information might be transferred to the owners of the business which he is going to inspect. In this way, a wicked vendor and a person who practises a doubtful thing will be able to escape or a defective thing will be removed and it would not be possible to produce it as an evidence against him. On other occasions, al-Saqaṭī maintains that even if a defective thing is found in the presence of that vendor, he may claim that it does not belong to him, but was put at his premises when he was away and as a result the *muḥtasib* will not be able to bring him to justice<sup>77</sup>. It is interesting to note here that al-Saqaṭī seems to suggest that elements of surprise and secrecy are necessary to ensure that inspection in the market will succeed. However, one should not forget that periodical inspection was also in use.

According to al-Māwardī, in the case of bad quality of craftsmen, the *muḥtasib* may denounce them in general, even though he did not receive any complaint from the purchaser. However, in the case of malpractice of the craftsmen, such as when a manufacturer who had been requested by the purchaser to complete a certain task and deliberately does it unsatisfactory

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<sup>77</sup>Ibid.



and in a deceiving way, the purchaser needs to make a complain so that the *muḥtasib* can denounce and admonish him. On the other hand, if the case involves liability or when an estimation is needed, then it is to be decided by the *qāḍī*. However, the *muḥtasib* may enforce the liability if a valuation previously made on a similar situation (*mithl*) is sufficient and where personal reasoning is not needed<sup>78</sup>.

Al-Māwardī maintains that in the case of forbidden commercial transactions, the *muḥtasib* should denounce these acts and forbid them, but for him to impose a punishment (*ta'dīb*) would depend on the circumstances and severity of each case. According to al-Māwardī, the *muḥtasib* has no right to penalise those wrongful acts where the jurists differ as to whether to sanction or disapprove of them, except when there is a minor dispute and as a preventive measure against committing prohibited acts agreed upon by the jurists. An example of this is the case of *ribā al-naqd*<sup>79</sup>, because the difference is small and in order to prevent oneself from committing *ribā al-nasi'ah*<sup>80</sup> which the jurists unanimously agreed to be unlawful. As to whether the *muḥtasib* should forbid the vendor from committing *ribā al-naqd* or not and include it under his authority, there are two opinions. The

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<sup>78</sup>*Wahbah*. 7:89. However, according to Amedroz, he refers to it as a reasonable estimation. Amedroz, *JRAS*. p. 97.

<sup>79</sup>Profit arising from an excess in quantity of the equivalent on a sale, like that of gold, silver, wheat, barley, salt and dates. This is also known as *ribā al-faql*. *Wahbah*. 4:270, 670.

<sup>80</sup>Profit due to deferred payment (*ribā nasi'ah*). *Wahbah*. 4:673.



first was the opinion of Abū Saʿīd al-Iṣṭakhrī who maintains that the *muḥtasib* is capable of deciding and enforcing his opinion on matters where the jurists differ. However, Abū Saʿīd holds that the *muḥtasib* should be legally qualified. On the other hand, the second opinion which has not been identified by al-Māwardī holds that the *muḥtasib* should not impose his opinion or the opinion of his school of law upon others<sup>81</sup>. In this understanding al-Māwardī asserts that an unlawful contract of marriage is to be considered as amongst the prohibited commercial transactions (*muʿāmalāt*), even though such a contract is not one of them. In this respect, the *muḥtasib*'s denunciation depends on whether the jurists have unanimously agreed that such a marriage is unlawful. Therefore, he must not denounce a marriage where the jurists have differed on its illegality, except when there is a minor dispute and in order to prevent someone from committing a prohibited act. An example of this, is the case of *mutʿah* marriage, because it can be used as a means to approve adultery. As mentioned before, there are two views on whether the *muḥtasib* should denounce this practice or not. Nevertheless, as an alternative he may request them to seek a lawful contract of marriage which the jurists have unanimously agreed upon<sup>82</sup>.

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<sup>81</sup>Al-Māwardī, *Aḥkām*. pp. 241 and 243.

<sup>82</sup>Al-Māwardī, *Aḥkām*. p. 253. Ibn al-Farrāʾ, *Aḥkām*. p. 281-2. Ibn al-Ukhuwwah omits this. Ibn al-Ukhuwwah op.cit.

Al-Ghazālī seems to agree with the second opinion mentioned by al-Māwardī. In this way, we find that al-Ghazālī does not allow sales transactions without verbal agreement (*bayʿ al-taʿāṭī*). However, he then maintains that the *muḥtasib* is restricted in acting on this matter because it is based on personal reasoning (*ijtihād*). As a result it is not applicable to those who are against it<sup>83</sup>. It should be noted here that with regard to this kind of sale, there are three opinions of the jurists. The first is the opinion of the Ḥanafīs and the Ḥanbalīs, which maintains it as a lawful contract regardless of the value of the commodity. The Mālikīs hold the contract as lawful on the condition that obvious agreement between the vendor and purchaser has been established. The third opinion, which is the most strict, belongs to the Shāfiʿīs, the Shīʿīs and the Zāhirīs. They declare the contract to be inconclusive. However, some of the Shāfiʿīs like al-Nawawī, regard it as lawful on account of local practice<sup>84</sup>.

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<sup>83</sup>Al-Ghazālī, *Iḥyāʾ*. p. 432.

<sup>84</sup>*Wahbah* 4:100-1.

## CHAPTER FIVE

### The duty to supervise moral and religious behaviour

#### 5.0. Introduction

As we have mentioned earlier, the work of Yaḥyā ibn ʿUmar has dealt with the matter. This can be found in cases of playing musical instruments, using public baths, crying aloud over the dead, visiting graves, women wearing shoes that make noises, slaughtering an animal, the loss of wedding outfit and basic house equipment and immoral behaviour<sup>1</sup>. Later, we find the authors of *ḥisbah* literature normally discuss this duty under the *muḥtasib*'s responsibility in matters dealing with the rights of God. In this way, the discussions include acts of worship, immoral behaviour and possession of unlawful property.

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<sup>1</sup>See pp. 73-4 above.

### 5.1. The acts of worship

The acts of worship include prayer, calls to prayer, alms-tax (*zakāt*) and fasting. The discussion on this subject also deals other aspects which are concerned with heresy<sup>2</sup>.

According to al-Māwardī, Ibn al-Farrā' and Ibn al-Ukhuwwah in the cases of prayer, ablution and the call to prayer, the *muḥtasib* has to prevent any attempt to change the valid procedure, such as uttering the silent prayer aloud and vice versa, or making additions to prayer and the call to prayer which are not approved by the tradition<sup>3</sup>. The *muḥtasib* should denounce these acts and punish (*ta'dīb*) those who are stubborn (*mu'ānid*) when their actions are not approved by an authoritative religious leader (*imām matbū'*)<sup>4</sup>. The same is the case of improper washing of the impurities off one's body, garments and place of praying<sup>5</sup>.

According to al-Māwardī, in the cases of worship, the *muḥtasib* cannot denounce these acts unless he is certain as he cannot rely on

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<sup>2</sup>Al-Māwardī, *Aḥkām*. p. 247. Ibn al-Farrā', *Aḥkām*. p. 276. Ibn al-Ukhuwwah, *Ma'ālim*. p. 27. Amedroz, *JRAS*. p. 86.

<sup>3</sup>Al-Māwardī, *Aḥkām*. p. 247. Ibn al-Farrā', *Aḥkām*. p. 276. Ibn al-Ukhuwwah, *Ma'ālim*. pp. 27-8.

<sup>4</sup>The latter injunction is found in both al-Māwardī and Ibn al-Ukhuwwah, whereas Ibn al-Farrā' omits it. Al-Māwardī. loc.cit. Ibn al-Farrā'. loc.cit. Ibn al-Ukhuwwah. loc.cit.

<sup>5</sup>Al-Māwardī, loc.cit. Ibn al-Farrā', loc.cit. Ibn al-Ukhuwwah, loc.cit.

suspicion (*ẓann*). Al-Māwardī then cites the story of a *muḥtasib* who questioned a man entering a mosque with his shoes on, whether he did this at his house. The man denied this, but the *muḥtasib* insisted that he must take an oath to support his denial. Al-Māwardī held that the *muḥtasib* had shown his ignorance and had exceeded the *ḥisbah* jurisdiction by his bad opinion (*sū' al-ẓann*) of others<sup>6</sup>. Although al-Ghazālī does not make the same statement as al-Māwardī, he seems to agree with him, for in this respect he refers to a saying that "to conceal what you have seen is better than to reveal what you are suspicious of"<sup>7</sup>. Similarly, al-Māwardī argues that when he suspects that someone has not performed the ritual washing (*ghusl janābah*), or has abandoned the prayer or the fasting, he must not denounce him, but he may admonish and warn him of God's punishment. In other words, suspicion does not justify a denunciation, but allows him to admonish and give warning<sup>8</sup>.

According to al-Māwardī and Ibn al-Farrā', in the case of the Friday prayer, the *muḥtasib* must ensure that the duty is enforced and its omission punished when the total number of inhabitants reaches a sufficient number, i.e. forty and upwards<sup>9</sup>. It should be noted here that this was the opinion

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<sup>6</sup> Al-Māwardī, *Aḥkām*. p. 247.

<sup>7</sup> Al-Ghazālī, *Iḥyā'*. p. 420.

<sup>8</sup> Al-Māwardī, *Aḥkām*. p. 248.

<sup>9</sup> Al-Māwardī, *Aḥkām*. p. 243. Ibn al-Farrā', *Aḥkām*. p. 271.

of the Shāfi'is and the Ḥanbalīs, while the Mālikīs hold that the minimum number is twelve, and Abū Ḥanīfah declares three men excluding the *imām* are a sufficient number to perform the Friday prayer<sup>10</sup>. In this way, al-Māwardī holds that if the number is insufficient, there are four possible situations:

- a) The *muḥtasib* and the community both agree that the prayer should be performed. Here, the *muḥtasib* must enforce the duty but the penalty for non-compliance should be lighter than that in the situation where the number of the congregation is sufficient.
- b) The *muḥtasib* and the community both agree that it should not be performed. In this situation, the *muḥtasib* must not enforce the duty but it is preferable for him to prevent those who practise it.
- c) The community views that it should be done, but the *muḥtasib* disagrees. In this situation, the *muḥtasib* must neither impose the duty, for it is against his own opinion, nor forbid them from what they regard as a duty.
- d) The *muḥtasib* approves of it but the community is against it. Here abandonment, if persisted in, may cause the Friday prayer to be

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<sup>10</sup>Wahbah. 2:275-6.



neglected indefinitely even if the number of the population increases. According to al-Māwardī in this situation there are two opinions of the Shāfi'is:

i) Abū Sa'īd al-Iṣṭakhrī holds that he may lawfully act on the account of public interest, for he fears that the younger generation will be misled into thinking that the duty can be dropped with a greater population as it had been when the population was less. According to al-Māwardī, the same precaution was given by Ziyād<sup>11</sup> who ordered the courtyard of the mosques of Baṣrah and Kūfah to be strewn with pebbles in order to avoid possible misunderstanding among the younger generation who might think that the act of rubbing the face after prostration is part of the prayer, when the fact is, it was to remove the sand<sup>12</sup>.

b) an anonymous opinion of the Shāfi'is which maintains that the *muḥtasib* should not denounce them because he is not entitled to bring people into his way of thinking, nor to impose his opinion on them in matters of religion when they are able

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<sup>11</sup>According to Ibn al-Ukhuwwah, he was Ziyād ibn Abī Sufyān. Ibn al-Ukhuwwah, *Ma'ālim*. p. 23.

<sup>12</sup>Al-Māwardī, *Aḥkām*. pp. 243-4.

to do so themselves, for according to their opinion the obligation falls due to insufficient numbers<sup>13</sup>.

In relation to this, Ibn al-Farrā' declares that the *muḥtasib* may enforce the duty by virtue of the opinion of Aḥmad ibn Ḥanbal that he may do so on the account of public interest lest the young should grow up to neglect the duty thinking that it can be dropped with a greater population as it had been when the population was less. However, according to another opinion, the *muḥtasib* may not enforce the duty for he should not impose his opinion on others in a matter of religion, when they are capable of doing so themselves. For this, Ibn al-Farrā' cites another opinion of Aḥmad ibn Ḥanbal which declares that one should not impose his school's teaching upon others<sup>14</sup>.

According to al-Māwardī, in the case of *ʿĪd* prayer, there are two opinions of the Shāfiʿīs, the first regarding it as a recommendable act (*masnūnah*) and the second as a collective duty (*farḍ kifāyah*). On this basis, if the *muḥtasib* accepts the first opinion, he may recommend the performance of the prayer. Whereas, he is obliged to order such an act if he agrees with the second opinion<sup>15</sup>. Meanwhile, Ibn al-Farrā' maintains that

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<sup>13</sup> Al-Māwardī, *Aḥkām*. p. 244.

<sup>14</sup> Ibn al-Farrā', *Aḥkām*. pp. 271-2.

<sup>15</sup> Al-Māwardī. op.cit.

the *muḥtasib* should order the performance of the *ʿīd* prayer, because he regards it as a collective duty (*farq kifāyah*)<sup>16</sup>.

As for prayer in congregation (*ṣalāt al-Jamāʿah*)<sup>17</sup>, and call to prayer at a mosque, al-Māwardī argues that they are parts of the established Islamic rites and signs of worship by which the Prophet distinguished the Islamic country (*dār al-Islām*) from that of polytheism (*dār al-shirk*). In the event of the inhabitants of a town deciding to suspend the performance of the congregational prayer at their mosque or to omit the call to prayer, there are two opinions of the Shāfiʿīs<sup>18</sup>. The first holds that it is recommendable (*mandūb*) for the *muḥtasib* to enforce these duties, whereas the second regards it as obligatory (*wājib*). Ibn al-Farrāʾ agrees with the second opinion of the Shāfiʿīs and holds that it is compulsory for the *muḥtasib* to enforce the performance of these duties. This is because the Ḥanbalīs maintain that the performance of prayer in congregation is an individual duty (*farq ʿayn*). It should be noted that the Ḥanafīs and the Mālikīs consider this as the most recommendable act (*sunnah muʾakkadah*)<sup>19</sup>. However, according to al-Māwardī, the neglect of prayer

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<sup>16</sup>Ibn al-Farrāʾ, *Aḥkām*. p. 272.

<sup>17</sup>However, Amedroz and Levy have translated this as the Friday prayer. See Amedroz, *JRAS*. p. 82. Levy, transl. *Maʿālim*. p. 7.

<sup>18</sup>However, according to the more reliable opinion (*aṣaḥḥ*) of the Shāfiʿīs, the performance of the congregational prayer is a collective duty (*farq kifāyah*). *Wahbah*. 2:150.

<sup>19</sup>Ibn al-Farrāʾ, *Aḥkām*. p. 272. See *Wahbah*. 2:149-150.

in congregation (*jamā'ah*)<sup>20</sup> and the call to prayer by an individual should not be denounced by the *muḥtasib*, because these are considered as recommended (*nadb*) and can be missed with a justifiable excuse<sup>21</sup>. However, the *muḥtasib* has to denounce those who neglect these duties on a habitual basis for they might be imitated by others. Even so, the *muḥtasib* must comply with the standard procedure of law and hear the reason for their non-compliance. Al-Māwardī then cites a tradition of the Prophet who seriously considered setting fire to the houses of those who failed to attend the congregational prayer at the mosque<sup>22</sup>.

In the case where the individual has delayed the prayer until the time has expired, the *muḥtasib* should take into account his defence. If the cause was forgetfulness, the *muḥtasib* should admonish, not punish; if it be negligence and carelessness, he should punish and compel performance; but delay is not punishable when the specified hour is not yet past on the grounds of the diversity of legal opinions for some hold delaying to be recommendable<sup>23</sup>. Where the general consensus decided to delay the prayer to its utmost time limit, and the *muḥtasib* holds that it is better to

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<sup>20</sup>Perhaps this is the correct reading *jamā'ah* (prayer in congregation), instead of *jum'ah* (Friday prayer), because to neglect the Friday prayer by an individual is wrong and must be objected by the *muḥtasib*. Ibn al-Farrā' and Ibn al-Ukhuwwah also refer this as *ṣalāt-jamā'ah* (prayer in congregation). Ibn al-Farrā', *Aḥkām*. p. 272. Ibn al-Ukhuwwah, *Ma'ālim*. p. 24.

<sup>21</sup>See *Wahbah* 2:169-172.

<sup>22</sup>See *Wahbah*. 2:151.

<sup>23</sup>Al-Māwardī, *Aḥkām*. pp. 244-5. Ibn al-Farrā', *Aḥkām*. p. 272.

be performed earlier, the jurists have two different views<sup>24</sup>. The first is to follow the opinion of the majority, but this might lead to a misconception among the younger generation so that they think that this is the specified time for the prayer. The second is to ignore the consensus, but this will bring about disintegration, because some will perform the prayer at a later period while others will have done it earlier. Ibn al-Farrā' agrees with the second opinion and holds that the *muḥtasib* may enforce his own view, in order to avoid the misunderstanding of the younger generation<sup>25</sup>.

The *muḥtasib* must denounce an *imām* (i.e. the leader of prayer) who prolongs the prayer in public and in much frequented mosque, because it will cause the weak to suffer and discourage the busy. In this respect the Prophet reminded Mu'ādh ibn Jabal, who lengthened the prayer not to become a tester (*fattān*) of men's belief. However, the *muḥtasib* must not punish, but replace him with a less prolix *imām*<sup>26</sup>.

With regard to the call to prayer, the *muḥtasib* must not interfere with the individuals whose view differs from his, if their decision is supported by a legal opinion. Thus, he should not enforce his own view on

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<sup>24</sup>According to Levy, this is the question whether the *muḥtasib* must submit to common view. Levy, transl. *Ma'ālim*. p. 7.

<sup>25</sup>Al-Māwardī, *Aḥkām*. p. 245. Ibn al-Farrā', *Aḥkām*. p. 272.

<sup>26</sup>Al-Māwardī. *Aḥkām*. pp. 256-7. Ibn al-Farrā', *Aḥkām*. pp. 288-9.



them or prevent their practice. Similarly, in the case of ablution and purification, he must not denounce their practice when it is in accordance with a legal opinion, even though his view is different. Examples that can be included are the removal of impurity by liquids and ablution with water mixed with other substances or rubbing only part of the head, or neglecting to remove as much as a *dirham* weight of impurity - none of these are matters for constraint or prohibition. However, the *muhtasib* should denounce the practise of making ablution with fermented date juice (*nabīdh al-tamr*) when water is not available, with regard to two possible consequences. The first is that this may lead to people regarding such drink as always permissible and the second is that this may lead to people becoming intoxicated by drinking it<sup>27</sup>.

The *muhtasib* should not punish someone whom he finds eating during the day in *Ramaḍan*, until he is certain of their reason for breaking the fast. If the reason was because of sickness or that they are travelling, then they should not be denounced<sup>28</sup>. He may make an inquiry, if circumstantial evidence with suspicious indications (*imārāt al-rayb*) exists. In other words, suspicious indications justify inquiry. In this respect, if the excuse is legitimate, the *muhtasib* must approve of it and should not

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<sup>27</sup>Al-Māwardī, *Aḥkām*. p. 245. Ibn al-Farrā', *Aḥkām*. p. 273. Ibn al-Ukhuwwah, *Ma'ālim*. p. 25.

<sup>28</sup>Al-Māwardī, *Aḥkām*. p. 248. Ibn al-Farrā', *Aḥkām*. p. 276. Ibn al-Ukhuwwah, *Aḥkām*. p. 28.



condemn him, but he may ask the person to eat in privacy. However, the *muḥtasib* may not make the man take an oath, if he is in doubt as to the truth of the statement made to him. On the other hand, if the wrongful act be without a valid excuse, the *muḥtasib* should admonish the offender openly and punish him. Even though there may be a valid excuse, the *muḥtasib* should not permit the man to eat openly in order to prevent any suspicion arising among ignorant people who are unable to differentiate between the situation of a valid excuse and an invalid one<sup>29</sup>.

In the case of someone who refuses to pay alms tax, it should be dealt with by the tax official (*ʿāmil al-ṣadaqah*)<sup>30</sup>, if it is a visible property (*al-amwāl al-zāhirah*). The *muḥtasib* may perhaps intervene if it is concealed property (*al-amwāl al-bāṭinah*) because the tax official is not entitled to look into this type of property. It should be noted here that al-Māwardī divides the property liable for alm-taxes into visible and concealed. The former are the agricultural products (*zarʿ*) and livestock (*mawashī*) which are difficult to conceal, in contrast to the latter which can be easily hidden and include properties such as gold, silver and some commodities (*ʿurūd tijārah*). According to al-Māwardī, the tax official is not liable to impose payment for concealed properties because that is the duty of its owner, but

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<sup>29</sup>Al-Māwardī. loc.cit. Ibn al-Farrā'. loc.cit. Ibn al-Ukhuwwah. loc.cit.

<sup>30</sup>The *ʿāmil al-sadaqah* is the *zakāt* official who collects the tax and receives one part of it for himself. This has been illustrated by the *Qurʾān*. *Al-Qurʾān* 9:60.

he may collect them when the latter has voluntarily declared them<sup>31</sup>. However, in this matter perhaps it is the duty of the tax official because he should know of any payment made to him. The punishment should be based on the man's evidence and if he claims to be paying it in secret, his statement should be accepted<sup>32</sup>.

In the case of a jurist (*faqīh*) and a preacher (*wā'iz*) found applying the revealed law without having the requisite ability, and when the public might be misled by their wrong interpretation (*sū' ta'wīl*) or misleading opinion (*sū' jawāb*), the *muḥtasib* must denounce them<sup>33</sup>. If he is in doubt of the person's legal ability, he cannot denounce him, but must hold an inquiry. Al-Māwardī then cites the case of 'Alī ibn Abī Ṭālib (d. 40) who interrupted al-Ḥasan al-Baṣrī (d. 110) while the latter was speaking in public because he wanted to test him. He then asked him what the foundation of the religion and the cause for its destruction. Al-Ḥasan replied that the first is piety (*wara'*) and the second is greed (*ṭama'*). 'Alī then allowed him to continue with his speech<sup>34</sup>. The same is the case with a student who introduces a view which is in contrast to the unanimous

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<sup>31</sup>Al-Māwardī, *Aḥkām*. p. 113 (Chapter Twelve on the jurisdiction of the tax officials (*wilāyat al-ṣadaqah*)).

<sup>32</sup>Al-Māwardī, *Aḥkām*. p. 248.

<sup>33</sup>Al-Māwardī. Ibid. Ibn al-Farrā', *Aḥkām*. p. 276. Amedroz, *JRAS* p. 88. Ibn al-Ukhuwwah omits this. Ibn al-Ukhuwwah, *Ma'ālim*. p. 29.

<sup>34</sup>However, neither Ibn al-Farrā' nor Ibn al-Ukhuwwah mention this story. Al-Māwardī, *Aḥkām*. pp. 248-9.

decision of the jurists (*ijma'*), or which is against the revealed law (*al-naṣṣ*), or where his opinion is rejected by the contemporary scholars. In these circumstances, the *muḥtasib* should reprove and the student should either repent, or if not, the case will be brought to the Caliph. This is because it is the duty of the caliph to purify the religion<sup>35</sup>.

Likewise, the *muḥtasib* should denounce some of the interpreters of the *Qur'ān* who may delude men from the clear revelations and lead them to secret heresy or when transmitters of traditions deal exclusively with those of no authority who are repugnant to the mind or corruptive to sound exegesis. However, the *muḥtasib* can denounce such acts only if he is able to distinguish between the right and the wrong. This can be achieved in two ways, either by the *muḥtasib*'s own learning and his personal reasoning (*ijtihād*) to elucidate the matter, or by the fact that the jurists of the time have agreed in declaring it as heresy. Thus, the *muḥtasib* can denounce such acts by depending upon the opinion of the jurists, and prohibit them based on their agreement<sup>36</sup>. However, according to Ibn al-Ukhuwwah the situation is very perilous (*khaṭar ʿaẓīm*) for an ignorant *muḥtasib* to indulge in these matters, for he might create more harm than good. It is for this reason that it has been said "An ordinary man may not carry out the

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<sup>35</sup>Al-Māwardī. Ibid. Ibn al-Farrā', *Aḥkām*. p. 277. Ibn al-Ukhuwwah, *Maʿālim*. p. 29.

<sup>36</sup>Al-Māwardī. loc.cit Ibn al-Farrā'. loc.cit.

duty of *ḥisbah*, except in an obvious case". Thus, if the case requires a personal reasoning (*ijtihād*), the ignorant person is therefore, prohibited<sup>37</sup>.

## 5.2. Immoral behaviour

The prohibited act (*maḥzūr*) is defined as an action for which a person who practises it will be punished and in contrast he will be rewarded for abstaining from it. These acts are also considered the same as *ḥarām* (forbidden acts) and they are in contrast to *mubāḥ* (permissible acts). In discussing the matter, al-Māwardī refers to *maḥzūrāt* as those acts to which the *muḥtasib* must deter the public from exposing themselves. He then refers to the tradition of the Prophet which said, "Abandon what occasions doubt for certainty"<sup>38</sup>. Al-Ghazālī defines *maḥzūr* as all kinds of wrongful acts which are forbidden by law and he maintains that it is more severe than the *makrūh* (abominable acts). Thus, in the latter situation, the *muḥtasib* is not required to denounce it on a compulsory basis and to keep silence about it is not prohibited either<sup>39</sup>.

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<sup>37</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 29-30.

<sup>38</sup>Bukhārī, *Ṣaḥīḥ*. vol 3, pp. 151-3. However, Ibn al-Farrāʾ omits this. Al-Māwardī, *Aḥkām*. p. 249. Ibn al-Ukhuwwah, *Maʿālim*. p. 30.

<sup>39</sup>Al-Ghazālī, *Iḥyāʾ*. p. 428. See M.H. Kamali. *Principles of Islamic Jurisprudence*. p. 329. However, Amedroz translates the term *maḥzūr* as reprehensible acts. Amedroz, *JRAS*. p. 86.

According to al-Māwardī and Ibn al-Farrā', the prohibited acts include the matters of segregation between sexes, the possession of wine, forbidden dolls and musical instruments, and the case of spying for hidden matters. The *muḥtasib* must begin by denouncing such an act. He cannot inflict a punishment (*ta'dīb*), unless a warning has been given<sup>40</sup>. Al-Māwardī then cites a story reported by Ibrāhīm al-Nakha'ī<sup>41</sup> where 'Umar prohibited men from performing the circumambulation (*ṭawāf*) of the *Ka'bah* with women. 'Umar then saw a man praying with a woman, so he hit him with a whip (*dirrah*). The man said to him, "By God! If I am right, you are doing injustice to me and if I am wrong, you should warn me". 'Umar then asked him, "Didn't you notice my strict order?". The man replied, "No, I did not know of that". 'Umar then gave him the whip and said, "Retaliate on me (and hit me back)". The man replied, "No, I will not retaliate today". 'Umar said, "Forgive me". The man said, "No, I will not forgive you". Then they separated. On the next day, they met again and 'Umar's face changed. The man said, "I think what happened to me has hastened the change in you". 'Umar agreed. The man then said, "Indeed, I testify that I have forgiven you"<sup>42</sup>.

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<sup>40</sup>See pp. 173 and 179 above.

<sup>41</sup>Abū 'Imrān Ibrāhīm al-Nakha'ī ibn Yazīd (d. c 96). A devout and learned scholar of Kūfah. He studied under al-Ḥasan al-Baṣrī and Anas ibn Mālik, and taught Abū Ḥanīfah, who may have been influenced by his extensive use of personal judgement (*ra'y*) in matters of jurisprudence. "*Ḥiyal*" *EI(1)*. 3:512 and "*Maytah*" *EI(1)*. 6:925. Fuat Sezgin i, pp. 403-4. al-Ziriklī, *al-A'lām*. 9: 85-6. See also Winter. *Al-Ghazālī*. p. 296.

<sup>42</sup>Ibn al-Farrā' omits this. Al-Māwardī, *Aḥkām*. p. 249. Ibn al-Ukhuwwah, *Ma'ālim*. p. 30.

The *muḥtasib* must insist on segregation between sexes in public especially in the street, but not in a crowded street (*ṭarīq sabīl*) for such occurrence is unavoidable. As for a secluded street (*ṭarīq khāliyah*), the *muḥtasib* may compel segregation between men and women who are in doubtful circumstances, but he cannot punish them because they might be related. Nevertheless, he may advise them not to do so because they might be wrongly accused. If they are not related, the *muḥtasib* should ask them to fear God as their action might lead them into committing a sin. In this matter, his attitude towards them is based on their indications (*imārāt*)<sup>43</sup>.

According to al-Māwardī and Ibn al-Farrā', the *muḥtasib* must not hasten to denounce someone until he has made an inquiry into the matter<sup>44</sup>. The same is the opinion of al-Ghazālī, that the first stage of *ḥisbah* is to make an inquiry (*ta'arruf*)<sup>45</sup>.

The *muḥtasib* must not spy (*tajassus*) on prohibited acts which are committed in secret. Thus, he should not uncover these wrongful acts but protect such concealment. In this respect, the Prophet said, "Those who commit these kinds of disgraceful acts (*qadhūrāt*), they must conceal them

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<sup>43</sup>Al-Māwardī. loc.cit. Ibn al-Farrā', *Aḥkām*. pp. 277-8. Ibn al-Ukhuwwah. loc.cit.

<sup>44</sup>Al-Māwardī. loc.cit. Ibn al-Farrā', *Aḥkām*. p. 277.

<sup>45</sup>Al-Ghazālī, *Iḥyā'*. p. 420. See p. 169 above.



with God's cover (i.e. to turn to God in repentance), because he who reveals to us his own wrongful act, we will impose on him God's punishment"<sup>46</sup>.

However, if evidence (*imārāt*) have shown that such wrongful acts are likely to have been committed, the case can be divided into two situations:

a) The *muḥtasib* is satisfied that such a wrongful act has been committed. This is the case where he was informed by someone who can be trusted, that a man is in isolation with a woman to commit adultery, or with another man to kill him. Here, the *muḥtasib* may inspect these acts. Likewise, persons acting voluntarily may carry out an investigation of such wrongful acts that come to their knowledge, as was the case with al-Mughīrah ibn Shu<sup>c</sup>bah<sup>47</sup>. In Basrah, he was frequently visited (*kalafa*) by a woman from the *Banū Hilāl* known as Umm Jamīl bint Miḥjam ibn al-Afqam, who had a husband from Thaqīf named al-Ḥajjāj ibn <sup>c</sup>Abīd. The case then came to the attention of Abū Bakrah ibn Masrūḥ, Sahl ibn Ma<sup>c</sup>bad, Nāfi<sup>c</sup> ibn al-Ḥārith and Zayyād ibn <sup>c</sup>Abīd. They then watched (*raṣada*) for him until she had entered the house and they caught them by surprise (*hajama*), and gave the evidence before <sup>c</sup>Umar. <sup>c</sup>Umar did not disagree with their assault, even though he had inflicted on them the

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<sup>46</sup>Al-Māwardī, *Aḥkām*. p. 252. See *Muwattaʿa*<sup>1</sup>. transl. A. Bewley. p. 346.

<sup>47</sup>The governor of Baṣrah under the Caliph <sup>c</sup>Umar ibn al-Khaṭṭāb. Isbahānī, *Aghānī* xiv, p. 145. Ibn Khallikhan. transl. iv, p. 255-6.

*qadhf* punishment due to the withdrawal of evidence of one of them<sup>48</sup>.

b) The second situation falls short of the first one, and here spying is not permitted and investigation cannot be carried out. An example of this is the case of °Umar ibn al-Khaṭṭāb, when he visited people who were addicted to drinking and had been making fire in hovels (*akhṣāṣ*), so he reminded them that he had prohibited them from drinking and lighting fire. They then replied by saying that God had prohibited him from spying and from entering someone's house without permission. °Umar accepted their arguments and left them without making any denunciation<sup>49</sup>. As for someone who hears sounds of musical instruments from inside someone's house, he should denounce him from outside but must not enter the house without permission (*hajama*). This is because such wrongful acts are obvious to the *muḥtasib* and he is not required to investigate them<sup>50</sup>.

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<sup>48</sup> Al-Māwardī, *Aḥkām*. p. 252. Isbahānī, *Aghānī*. xiv, p. 145-7. Ibn Khallikān, transl. iv. p. 255-8.

<sup>49</sup> Al-Māwardī, *Aḥkām*. pp. 252-3. Ibn al-Farrā', *Aḥkām*. p. 280. Ibn al-Ukhuwwah, *Ma'ālīm*. pp. 37-8.

<sup>50</sup> Al-Māwardī, *Aḥkām*. p. 253. Ibn al-Farrā', *Aḥkām*. p. 281. Ibn al-Ukhuwwah, *Ma'ālīm*. p. 38. See also pp. 118-9 above.

The castration of human beings and animals should be prohibited and the offender should be punished. If it involves the rights of retaliation or blood-money, the *muḥtasib* can compel this as long as there is no legal dispute<sup>51</sup>. He is also responsible for prohibiting the dyeing of grey hair except for those engaged in fighting in a holy war. As for someone who does this for the purpose of gaining a woman's favour, he should be denounced. However, dyeing with *henna* is permitted, so is *katm*<sup>52</sup>. It is not permissible to earn money by fortunetelling (*kahānah*) and by playing forbidden musical instruments. Here, the person who gives and receives such money will be punished<sup>53</sup>.

As for someone who interrupts other people's lives by begging for charity, if he is rich either because of his property or his occupation, the *muḥtasib* should denounce him and punish (*ta'dīb*) him if necessary. Here, it is the duty of the *muḥtasib* rather than the tax official. Al-Māwardī claims that such an act was practised by the caliph ʿUmar<sup>54</sup>. A beggar who appears to have signs of wealth (*āthār al-ghinā*) should be told that

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<sup>51</sup>Al-Māwardī, *Aḥkām*. p. 258. Ibn al-Farrā', *Aḥkām*. p. 286. Ibn al-Ukhuwwah, *Ma'ālim*. p. 197.

<sup>52</sup>According to Hava, *katm* is used to dye the hair black. As for henna it is a red dye. *Hava*. p. 146, 644. See also Abū Ḥanīfah al-Dīnawarī, *Book of Plants*. p. 179. Al-Māwardī. loc.cit. Ibn al-Farrā'. loc.cit. Ibn al-Ukhuwwah, *Ma'ālim*. pp. 197-8.

<sup>53</sup>Al-Māwardī, *Aḥkām*. loc.cit. Ibn al-Farrā', *Aḥkām*. loc.cit. Ibn al-Ukhuwwah, *Ma'ālim*. p. 199.

<sup>54</sup>However, Ibn al-Farrā' does not mention this. Al-Māwardī, *Aḥkām*. p. 248. Ibn al-Ukhuwwah, *Ma'ālim*. p. 29.

begging is unlawful if one is not in want, but he should not be actually prohibited, as he may be in secret a needy person. In the case of a beggar who is strong and able to work, the *muḥtasib* should warn him and ask him to work, and if he persists in begging he may be punished<sup>55</sup>.

### 5.3. Possession of unlawful property

The discussion on this matter includes possession of wine, selling musical instruments, toys with animal figures, silk clothes and hats made of gold and silk which are specially designed for men and other kinds of wrongful activities which are forbidden by law<sup>56</sup>.

In the case of open possession of wine by a Muslim, the *muḥtasib* should punish him and the wine should be poured away. However, if he is an *ahl al-dhimma*, he shall be punished for publicly exposing the wine. The jurists differed on whether the wine should be poured away. Abū Ḥanīfah regards it as their property and therefore, entitled to protection. Thus, he is against it being poured away. On the other hand, al-Shāfiʿī

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<sup>55</sup>Al-Māwardī. loc.cit. Ibn al-Farrāʾ. loc.cit.

<sup>56</sup>See al-Māwardī, *Aḥkām*. pp. 249-251. Ibn al-Farrāʾ, *Aḥkām*. pp. 277-280. Al-Ghazālī, *Iḥyāʾ*. p. 432.

holds that there should be no protection for the unbeliever any more than the believer, and thus it should be poured away<sup>57</sup>.

As for fermented fruit-juice (*nabīdh*)<sup>58</sup>, Abū Ḥanīfah is against it being poured away and punishment, because according to him the Muslims have accepted it as lawful property<sup>59</sup>. However, according to al-Shāfi'ī it is not lawful property and it is considered the same as wine. Thus, there is no liability (*ghurm*) on someone who pours it away. It should be noted here that this is also the opinion of the majority of the jurists, except for Abū Ḥanīfah and Abū Yūsuf<sup>60</sup>. Ibn al-Ukhuwwah claims that fermented fruit juice (*nabīdh*) is prohibited by the tradition of the Prophet which said, "Wine is prohibited because of its substance, so is every kind of intoxicating liquor". In fact, this is actually the argument of Abū Ḥanīfah which allows the taking of *nabīdh* as long as it does not intoxicate<sup>61</sup>. There are other traditions of the Prophet which prohibit every kind of intoxicating liquor. An example of this is, "Every kind of intoxicating liquor is wine (*khamr*) and every kind of wine is prohibited (*ḥaram*). On another occasion the

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<sup>57</sup>Al-Māwardī, *Aḥkām*. p. 251. Ibn al-Ukhuwwah. loc.cit. Ibn al-Farrā' omits this, but he agrees to the statement that a non-Muslim can be punished and the wine be poured over him. Ibn al-Farrā', *Aḥkām*. p. 278.

<sup>58</sup>Normally it was made from dates. *Lane*. 2:2756.

<sup>59</sup>*Wahbah*. 6:154-5, 165. °Abd al-Qādir °Audah, *Tashrī'*. 1:582.

<sup>60</sup>*Wahbah*. 6:165-6. °Abd al-Qādir °Awdah, *Tashrī'*. 1:581-2.

<sup>61</sup>*Wahbah*. 6:156

Prophet said, "Whatever causes intoxication when consumed in large quantities is prohibited, even the slightest amount of it"<sup>62</sup>. Ibn al-Ukhuwwah also refers to the tradition of ʿUmar who was reported as saying that wine is prohibited by the revelation and that it is of five kinds, coming from grapes (*ʿinab*), dates (*tamr*), wheat (*burr*), barley (*shaʿīr*) and raisins (*zabīb*). According to the tradition of the Prophet five kinds of wine can be produced which are from grape, honey (*ʿasal*), raisins (*zabīb*), wheat (*ḥiṭṭah*) and dates<sup>63</sup>. Ibn al-Ukhuwwah then argues that the Prophet curses ten groups of people related to wine. On that basis, according to him some of the jurists did not allow the selling of fruit juice (*ʿaṣīr*) to anyone who proposes to convert it into wine. Al-Shāfiʿī declares it to be a disapproved act (*makrūḥ*) parallel to the sale of arms to brigands (*qāṭiʿ al-ṭarīq*) or to enemies at war. However, al-Māwardī and Ibn al-Farrāʾ do not make these statements<sup>64</sup>. According to al-Māwardī, the *muḥtasib* has to take into consideration the circumstances of the case and to prevent its exposure. He should not pour away intoxicating liquor unless ordered to do so by a judge (*ḥākim*) who is competent to decide on legal matters, so that he will not be held responsible for the payment of compensation because it had been decided by the court<sup>65</sup>. A drunkard shall be punished (*taʿdīb*) for

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<sup>62</sup>*Wahbah*. 6:166. Goldziher, *Introduction*. p. 60.

<sup>63</sup>*Nayl al-Awṭār*. vol. 8, p. 173. *Wahbah*. loc.cit.

<sup>64</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 32-3.

<sup>65</sup>Presumably, that is when the judge is a Ḥanāfi jurist. See p. 232 above. Al-Māwardī, *Aḥkām*. p. 251. Ibn al-Farrāʾ, *Aḥkām*. p. 278. Ibn al-Ukhuwwah, *Maʿālim*. p. 33.



revealing his drunkenness and acting foolishly. However, he shall not be punished according to the revealed penalty (*ḥadd*) but that of the discretionary punishment for lack of self-control and exposing his stupidity<sup>66</sup>.

However, Ibn al-Ukhuwwah seems to disagree with the jurists. He goes further by saying that as for someone who drinks intoxicating liquor (*muskir*) and is of full age (*bāligh*), sane, Muslim and acting on free will (*mukhtār*), he shall be punished according to the revealed punishment. If he is a free man, he shall be punished by forty stripes being inflicting on him. This is on the authority of ʿAlī saying that the Prophet and Abū Bakr inflicted forty, while ʿUmar is declared to have inflicted eighty stripes<sup>67</sup>. However, for slaves it is half the number, parallel to the case of fornication (*zinā*). The caliph may increase the penalty up to eighty stripes based on the authority of ʿUmar. However, according to the jurists of Khurāsān this is not permissible, except if the extra stripes are considered as a discretionary penalty. This is also the opinion of al-Shāfiʿ<sup>68</sup>. Ibn al-Ukhuwwah then refers to the opinion of Shaykh ʿIzz al-Dīn ibn ʿAbd al-Salām<sup>69</sup> that it is permissible to combine the revealed and the

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<sup>66</sup>Al-Māwardī. loc.cit. Ibn al-Farrāʾ. loc.cit.

<sup>67</sup>*Nayl al-Awṭār*. vol. 7, p. 138. *Wahbah*. 6:152

<sup>68</sup>*Nayl al-Awṭār*. vol. 7, p. 142. *Wahbah*. 6:151. ʿAbd al-Qādir ʿAwdah, *al-Tashrīʿ*. 1:649. Coulson, *History*. p. 26.

<sup>69</sup>d. 577/1181. See Brockelmann, *GAL*. supp. i, pp. 766-7.

discretionary punishments. An example of this is the case of a man committing adultery while performing a lesser pilgrimage (*ʿumrah*) in the midst of the *Kaʿbah* during *Ramaḍān* while he is fasting, where he shall be punished according to the revealed penalty for the crime of adultery. In addition to that he is punishable at the discretion of the judge for breaking the rule of the *ʿumrah* and his indecent behaviour at the sanctuary. It seems that this case cannot be applied to that of drinking wine, because it involves more than one offence. Thus, the combination of the two penalties is justified in this case but not in that of drinking wine. If the free man was beaten forty one stripes and died, the jurists differ. Some maintained that the *muḥtasib* is liable to pay half the blood-money (*diyah*), on the grounds that the death was caused by a discretionary penalty inflicted in excess, and that it may give rise to action for compensation. Stripes for wine-drinking can be inflicted with hands, sandals or the other end of a piece of material. Some declared that it is also permissible to use a whip (*sawṭ*), on the basis of ʿAlī having Walīd ibn ʿUqbah beaten with a whip. However, the clear precedent was reported by ʿAbd al-Rahmān ibn Azhar, that beating was done by hands, sandals and the end of a cloth, in the presence of the Prophet. In the case of the *muḥtasib* using a whip and the man dying, he is liable for half of the blood-money. The jurists agree that the penalty can be inflicted if the accused has admitted to the offence of drinking<sup>70</sup>, or if

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<sup>70</sup>*Wahbah*. 6:167

proof is established that he has committed such a crime. It should be noted here that the evidence of two male witnesses is needed<sup>71</sup>. However, they differ in the case of someone found intoxicated or having the smell of wine. Some argue that the person should not be convicted, while others like Abū ʿAlī ibn Abī Hurayrah and Ibn Masʿūd were of the opinion that the penalty should be exacted. The majority of the jurists except for the Mālikīs are of the view that a faint smell of wine or vomit is not punishable. The Mālikīs are of the view that the penalty should be inflicted when two just witnesses smell the wine from the accused and gave evidence against him to the judge. This opinion is based on the authority of Ibn Masʿūd<sup>72</sup>. However, there is no *ḥadd* penalty on the unprotected non-Muslim (*ḥarbī*), insane person and children. It is not compulsory on the *dhimmī* and a person acting under compulsion (*mukrah*)<sup>73</sup>.

In the case of open possession of forbidden musical instruments (*malāḥī*), Ibn al-Ukhuwwah gives some examples. They are *zamr* or *mizmār*<sup>74</sup>, *ṭunbūr*<sup>75</sup>, *ʿūd*<sup>76</sup> and *ṣanj*<sup>77</sup>. It should be noted here that

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<sup>71</sup>Ibid.

<sup>72</sup>*Wahbah*. 6:167-8.

<sup>73</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 33-5.

<sup>74</sup>A wind instrument similar to a flute. *Lane*. 1:1251. *Hans Wehr*. p. 382.

<sup>75</sup>A stringed instrument resembling the mandolin, *Lane*. 2:1885. *Hans Wehr*. p. 570

<sup>76</sup>A lute. *Lane*. 2:2191. *Elias*. p. 465. *Hans Wehr*. p. 654.

with regard to these examples neither al-Māwardī nor Ibn al-Farrā' have mentioned them. However, Levy has mistakenly quoted that al-Māwardī has include the first example<sup>78</sup>. According to al-Māwardī, the *muḥtasib* should dismantle them in order to invalidate their original form and to punish (*ta'dīb*) the person who exposes them. If the instrument is made of wood and can be put to other uses, the *muḥtasib* must not break it. Ibn al-Farrā' does not allow the *muḥtasib* to dismantle the instrument regardless of whether the wood can be put to other uses or not<sup>79</sup>. Ibn al-Ukhuwwah goes further declaring that it is not permissible to sell the musical instruments. However, according to one view the sale is permissible providing that it is a profitable sale<sup>80</sup>.

According to al-Māwardī, playing with dolls (*lu'ab*) is permitted when no intention of committing a sin is involved. He argues that it is an introduction to children's upbringing and part of their basic training<sup>81</sup>. However, from another perspective, playing with toys can be included as a sinful act, because they take the shape of living creatures and resemble idols which are worshipped. Thus, according to al-Māwardī and Ibn al-

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<sup>77</sup>A cymbal. *Lane*. 2:1731. *Elias*. 380. *Hans Wehr*. p. 526.

<sup>78</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 35.

<sup>79</sup>Al-Māwardī, *Aḥkām*. p. 251. Ibn al-Farrā', *Aḥkām*. p. 278.

<sup>80</sup>Ibn al-Ukhuwwah, *Ma'ālim*. pp. 35-6

<sup>81</sup>However, Ibn al-Ukhuwwah has a slight different version. He says, "As for toys which (*al-latt*) are not intended for committing sin... ". Ibn al-Ukhuwwah, *Ma'ālim*. p. 36.

Farrā'), these are the reasons for their approval and disapproval. Here, for the *muḥtasib* to exercise his power whether to allow such acts or not would depend on the circumstances of the case. Presumably, the *muḥtasib* may ban playing with toys when they have been taken as idols<sup>82</sup>.

In the light of this, al-Māwardī cites a tradition where the Prophet on one occasion found his wife 'A'ishah playing with dolls (*banāt*) and did not disapprove of her<sup>83</sup>. Ibn al-Farrā' seems to disagree with him and he refers to the opinion of Aḥmad ibn Ḥanbal that such an act is not permissible if the dolls are in the shape of a living creature. Ibn al-Farrā' then quotes another opinion of Aḥmad ibn Ḥanbal that a legal guardian (*waṣī*) must not buy any toys in the shape of living creatures even though the child demanded them<sup>84</sup>. According to Ibn al-Farrā', Aḥmad ibn Ḥanbal regards the tradition which approves of playing with dolls as *gharīb*. However, it should be noted here that the tradition is mentioned by al-Bukhārī in his *Ṣaḥīḥ*<sup>85</sup>.

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<sup>82</sup>See al-Māwardī. loc.cit. Ibn al-Farrā'. loc.cit. Ibn al-Ukhuwwah. loc.cit.

<sup>83</sup>However, Ibn al-Farrā' omits this. Ibn al-Farrā'. loc.cit. Al-Māwardī. loc.cit. Ibn al-Ukhuwwah. loc.cit.

<sup>84</sup>Ibn al-Farrā'. loc.cit.

<sup>85</sup>Ibn al-Farrā'. loc.cit. See al-Bukhārī, *Ṣaḥīḥ*. vol 8, p. 16.

Al-Māwardī then reports the action of Abū Saʿīd al-Iṣṭakhrī, a Shāfiʿī jurist and the *muḥtasib* of Baghdād during the Caliph al-Muqtadir<sup>86</sup>, who closed the market of *al-dādī* and banned its selling, but sanctioned toys. However, Ibn al-Ukhuwwah reads this as *al-dādhī*, which perhaps is the correct version for Martin Levey has mentioned *al-dādhī* or *al-dādhīn* (Judas tree) and considered it as a useful remedy to ease a fistula, for itching and for a serious wound. It is believed that the name was derived from Greek and the tree was well-known in Spain<sup>87</sup>. Abū Saʿīd argues that the former is exclusively used for the making of *nabīdh* which in his view is unlawful. As for playing with dolls, it is permissible by virtue of the tradition of ʿAʾishah. Al-Māwardī and Ibn al-Ukhuwwah claim that the argument concerning the permission to sell dolls does not violate the rule of legal reasoning<sup>88</sup>. As for *al-dādhī*, it is mainly used for the making of *nabīdh*, though it may on certain occasions be used in medicine, but this is rare. Therefore, the sale is permissible for those who considered the *nabīdh* as lawful property (i.e. the Ḥanafīs)<sup>89</sup>. The sale may also be permissible to those who consider it as unlawful property (i.e. the Shāfiʿīs)<sup>90</sup> on the grounds that it can be used for medical purposes. Al-

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<sup>86</sup>Al-Māwardī, *Aḥkām*. p. 251.

<sup>87</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 36. M. Levey. *Medical Formulary of al-Kindī*. p. 265.

<sup>88</sup>However, Ibn al-Farrāʾ omits this injunction. Al-Māwardī, *Aḥkām*. p. 251. Ibn al-Ukhuwwah, *Aḥkām*. pp. 36-7.

<sup>89</sup>See p. 232 above.

<sup>90</sup>See p. 232 above.



Māwardī claims that Abū Saʿīd al-Iṣṭakhrī prohibited the sale not because *al-dādhī* is an unlawful property, but for the reason that the market had been exclusively allocated to the selling of that item, so that the public might be misled to regard it as the same as other lawful properties. Al-Māwardī argues that on certain occasions, it is wrong to reveal even lawful matters, and thus it should be denounced, as in the case of exposing the sexual relationship between husband and wife (*mubāsharah azwāj*)<sup>91</sup>.

In this way, Ibn al-Farrāʾ refers to the opinion of Aḥmad ibn Ḥanbal which was narrated by Abū Ṭālib, that he disapproves of the sale of *al-dādhī* to be used for the making of intoxicating liquor (*muskir*) and that the contract cannot be concluded. Aḥmad ibn Ḥanbal also disapproves of the sale of dates and raisins (*zabīb*) to someone who is addicted to *nabīdh* and has been seen drinking intoxicating liquor (*muskir*), because he might turn the dates and raisins into *nabīdh*<sup>92</sup>.

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<sup>91</sup>Al-Māwardī, *Aḥkām*. p. 252. Ibn al-Farrāʾ, *Aḥkām*. p. 278. Ibn Ukhuwwah. op.cit.

<sup>92</sup>Ibn al-Farrāʾ, *Aḥkām*. p. 278.

## CHAPTER SIX

### The duty to inspect health professions

#### 6.0. Introduction

Even though Yaḥyā ibn ʿUmar does not mention the duty to inspect health professions as parts of the role of market supervision, there are some legal decisions made by him which seem to be related to this matter. As we have mentioned earlier, Yaḥyā ibn ʿUmar disapproves of the sale of unripe dates soaked in vinegar and the practice of vendors who were blowing into carcasses<sup>1</sup>. According to Yaḥyā, such practices are unhealthy because they can spoil the food and harm the person who had eaten them<sup>2</sup>. Similarly, al-Saqatī also disapproves of vendors blowing into carcasses because he argues that a person who is suffering from halitosis might have corrupted the meat<sup>3</sup>. On another occasion, the work of Yaḥyā ibn ʿUmar refers to the opinion of Saḥnūn ibn Saʿīd who forbids a person suffering from leprosy to wash and take ablution by himself in running water because other healthy

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<sup>1</sup>See previous discussions in Chapter One p. 75 and in Chapter Two pp. 111-2, 114-5.

<sup>2</sup>Yaḥyā ibn ʿUmar, *The text (first)*. pp. 116-7 (blowing into carcasses), 118 (the sale of unripe dates soaked in vinegar). *The text (second)*. pp. 70-1 (blowing into carcasses), 74-5 (the sale of unripe dates soaked in vinegar).

<sup>3</sup>Al-Saqatī, *al-Ḥisbah*. p. 32.

persons might be affected by him. In this case, Saḥnūn suggests that the sufferer should be helped by another person where the water will be poured out for him<sup>4</sup>. These cases seem to suggest that the work of Yaḥyā intends to ensure that the products sold in the market are safe and healthy as well as to maintain the hygiene and well-being of the public. We find this matter has been developed even further by later *ḥisbah* literature especially in the works of al-Māwardī, Ibn al-Farrā', al-Shayzarī and Ibn al-Ukhuwwah. It is also obvious that these works have this as the duty of the *muḥtasib*.

As we have mention earlier, al-Māwardī and Ibn al-Farrā' held that there are three types of profession which are under the supervision of the *muḥtasib*<sup>5</sup>. We have dealt with the second and the third types of profession which in fact, are dealing with all kinds of economic activities in the market. As for the first type of profession, al-Māwardī and Ibn al-Farrā' refer to it as the medical practitioners and the teachers. We will discuss the duty of the *muḥtasib* to supervise the medical practitioners in this chapter, while the discussion on the teachers will be made in a subsequent chapter.

According to al-Māwardī and Ibn al-Farrā', medical practitioners require skill and sufficient knowledge with regard to their professions

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<sup>4</sup>Yaḥyā ibn ʿUmar, *The text (first)*. pp. 129-130. See previous discussions in Chapter One p. 75 and Chapter Two pp. 126-7.

<sup>5</sup>See previous discussion in Chapter Four p. 205.

because they are, in fact, risking other people's lives<sup>6</sup>. Therefore, the function of the *muḥtasib* in this matter is to ensure that only those who are competent be allowed to carry out treatment. However, neither al-Māwardī nor Ibn al-Farrā' explain the skill needed by those medical practitioners. In fact, we find this matter has been discussed by al-Shayzarī and Ibn al-Ukhuwwah. The discussion on this matter can be found in several chapters which are concerned with the supervision of the *muḥtasib* over the pharmacists (*sayādilah*)<sup>7</sup>, the druggists (*ʿaṭṭārīn*)<sup>8</sup>, the syrup makers (*sharrābīn*)<sup>9</sup> and the physicians (*aṭibbā'*)<sup>10</sup>. According to Sami Hamarneh, there seems to have been three classes of medical professions involved in dispensing drugs. The first were the *sharrābīn* or sellers of liquid medication and electuaries prepared with syrup or honey. They were often uneducated and required to have beside skill, an adequate training in the theory of uses of drugs under the direction of well-qualified pharmacists (*sayādilah*). The second class were the druggists and herbalists (*ʿaṭṭārīn*). In addition to collecting and dispensing herbs, they sold all kind of spices

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<sup>6</sup>Ibid.

<sup>7</sup>Al-Shayzarī, *Nihāyah*. Chapter Seventeen. pp. 42-7. Ibn al-Ukhuwwah does not clearly mentioned this. However, his Introduction to Chapter Twenty Four on the syrup makers (*sharrābīn*) is copied from al-Shayzarī discussion on pharmacists. Ibn al-Ukhuwwah, *Ma'ālim*. Chapter Twenty Four. p. 115.

<sup>8</sup>Al-Shayzarī, *Nihāyah*. Chapter Eighteen. pp. 48-55. Ibn al-Ukhuwwah, *Ma'ālim*. Chapter Twenty Five. pp. 121-127.

<sup>9</sup>Al-Shayzarī, *Nihāyah*. Chapter Nineteen. pp. 56-7. Ibn al-Ukhuwwah, *Ma'ālim*. Chapter Twenty Four. pp. 115-121.

<sup>10</sup>Al-Shayzarī, *Nihāyah*. Chapter Thirty Seven pp. 97-102. Ibn al-Ukhuwwah, *Ma'ālim*. pp. 165-9.

for cooking, or in cosmetics and medicines. The third class were the qualified pharmacists (*ṣayādilah*), well trained in the knowledge of the techniques of preparation and preservation<sup>11</sup>.

Ibn al-Ukhuwwah maintains that medicine (*ṭibb*) is a science (*ʿilm*) which is both theoretical (*naẓarī*) and practical (*ʿamalī*). It is permitted by the sacred law (*sharʿah*)<sup>12</sup> on the basis that thereby health is safeguarded and illnesses (*ʿilāl*) and sicknesses (*amrād*) repelled. He reports the permission to acquire it is mentioned in many traditions, one of them is related by ʿAṭāʾ ibn al-Sāʾib, he said; "I visited Alī ibn ʿAbd al-Rahmān al-Aslamī who was sick and his servant (*ghulām*) wanted to cure (*yudāwī*) him but he was not permitted<sup>13</sup>. So I said: "Leave him for I have heard ʿAbdullah ibn Masʿūd reporting from the Prophet that God does not send down a disease (*dāʾ*) without providing it with a cure (*dawāʾ*). Ibn al-Ukhuwwah adds that according to Sufyān, perhaps the tradition also mentioned: "It is an art of healing (*shifāʾ*) known to someone who learned it and unknown to those who ignored it. Ibn al-Ukhuwwah also quotes among similar traditions one in which it is reported from ʿAṭāʾ ibn Abī Hurayrah that the Prophet said; "O you people ! Cure your illnesses for God

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<sup>11</sup>Sami Hamarneh, "Origin and function of *ḥisbah* system in Islam and its impact on the health profession". *Arch. Gesch. Med.*. 1964. p. 140.

<sup>12</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 165. Al-Shayzarī, *Nihāyah*. p. 97.

<sup>13</sup>Perhaps the correct reading should be *fanahiya*, not *fanahaituhu*. Ibn al-Ukhuwwah, *Maʿālim*. p. 165.



does not send down a disease without providing it with a cure (*dawā'*)<sup>14</sup>. He also reports from Jābir that the Prophet has sent a physician to Ubayy ibn Ka'b, so that he can cauterise (*kawā*) him. In another tradition from Jābir, he reported: "A man was injured in the battle of Aḥzāb and the Prophet cauterised (*kawā*) him with his own hands". In another tradition narrated by Abū Hurayrah he said; "A man from Anṣār who is one of the Companions of the Prophet was injured in the battle of Uḥud, so the Prophet called for two physicians from Medina and ordered them to cure him. The two physicians replied; "O Messenger of God, verily it is true that we used to cure people's illnesses in Jahiliyyah's time, but when Islam came we only rely on God's destiny (*tawakkul*)". The Prophet then said; "Give him medical treatment because God does not send down a disease without providing it with a cure and He then heals it (*shifā'*). The two physicians cured and he soon recovered"<sup>15</sup>.

Ibn al-Ukhuwwah maintains that the practice of medicine is one of the duties for which the community is responsible (*farḍ kifāyah*) but despite that there were no Muslims to fulfil it. Many towns had no physician who did not belong to *ahl al-dhimmah*, and whose evidence about physicians is not accepted in the courts. Ibn al-Ukhuwwah holds that the Muslims do not

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<sup>14</sup>In another reading of Ibn al-Ukhuwwah, it reads *shifā'*. Ibn al-Ukhuwwah, *Ma'ālim*. p. 165.

<sup>15</sup>Ibid.



occupy themselves with studying it. Instead, they preoccupied (*hafata*) themselves to the study of the law (*ʿilm al-fiqh*), especially to the disputable (*khilāfiyyāt*) and controversial (*jadaliyyāt*) cases. Thus, the town is full (*mashḥūn*) of legists occupied with granting *fatwā* and giving replies to legal queries on points which arise. According to Ibn al-Ukhuwwah, the situation is, in fact, contrary to the teaching of Islam because it does not permit a situation where large numbers of people occupy themselves with a particular duty while another is neglected. Ibn al-Ukhuwwah also argues that by ignoring the duty to study and practise medicine, it would not be possible to claim superiority (*taqaddum*) over rivals (*aqrān*) and to acquire authority (*tasalluṭ*) over enemies<sup>16</sup>.

#### 6.1. The duty to supervise the makers of syrups (*sharrābīn*) and the pharmacists (*ṣayādilah*)

According to al-Shayzarī and Ibn al-Ukhuwwah, fraud and adulteration of drugs and syrups are numerous and it is not possible to identify them because they are of various natures (*ṭabāʿiʿ*) and mixtures (*amzajah*)<sup>17</sup>. Thus, al-Shayzarī holds that adulteration of the syrups is the most harmful act of all<sup>18</sup>. These syrups are of benefit for certain illnesses

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<sup>16</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 166.

<sup>17</sup>Al-Shayzarī, *Nihāyah*. p. 42. Ibn al-Ukhuwwah, *Maʿālim*. p. 115.

<sup>18</sup>Al-Shayzarī, *Nihāyah*. loc.cit.

(*marāq*) and temperaments (*mazāj*), but when other ingredients are added they change the quality of the mixture and inevitably do harm to the sufferer<sup>19</sup>. It is therefore the duty of the *muḥtasib* to admonish the pharmacists and the syrup makers with fear of God and warn them of divine punishment and earthly punishment (*taʿzīr*)<sup>20</sup>.

Ibn al-Ukhuwwah maintains that the *muḥtasib* should inspect (*yaʿtabir*) their syrups and drugs at any time without warning (*ʿalā ḥīn ghaflah*) and after their shops are closed, at night. Al-Shayzarī, however, suggests that the *muḥtasib* must inspect their drugs weekly. Perhaps this is because he is speaking about the qualified pharmacists (*ṣayādilah*) not ordinary syrup makers (*sharrābīn*)<sup>21</sup>.

According to Ibn al-Ukhuwwah, the *muḥtasib* must regulate the makers of syrups to prepare the syrups (*ashribah*) by using only a good and pure Egyptian sugar (*sukkar ṭayyib naqī miṣrī*). Other kinds of sugar like unclear (*tarnīq*) or imported (*jalabī*) honey mixture must not be used. The *muḥtasib* should also regulate them to follow the medical regulations (*dustūr ṭibb*) that for every ten *raṭl* of sugar, three and one-third *raṭl* of fruit juice must be added. They also must not add lemon juice to the syrups

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<sup>19</sup>Al-Shayzarī. loc.cit. Ibn al-Ukhuwwah. loc.cit.

<sup>20</sup>Al-Shayzarī. loc.cit. Ibn al-Ukhuwwah. loc.cit.

<sup>21</sup>Al-Shayzarī. loc.cit.

mixtures of apple (*tuffāḥ*), *injibār*<sup>22</sup>, violets (*banafsaj*) or other similar syrups, because it will cause the loosening (*jarada*) of the patient's bowels (*am<sup>c</sup>iyā*) and harm him<sup>23</sup>.

In this manner, Ibn al-Ukhuwwah holds that the names of the syrups are numerous. Thus, he will mention only the best known varieties and those which are commonly used<sup>24</sup>. The names of the syrups mentioned by Ibn al-Ukhuwwah are shown in the Table 6.1. below.

Table 6.1. Names of the syrups mentioned by Ibn al-Ukhuwwah

<u>Names of the syrups</u>
<i>sharāb julāb</i> (rosewater syrup)
<i>sharāb laynūfar</i> (syrup of nenuphar) <sup>25</sup>
<i>sharāb wardi ṭarī</i> (fresh-rose syrup)
<i>sharāb wardi azrār</i> (rose-buds syrup)

<sup>22</sup>Syrup of honeysuckle. Martin Levey, "Text and Documents: Fourteenth Century Muslim Medicine and the *Ḥisba*". *Medical History*. 7 (1963). p. 180.

<sup>23</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. p. 115.

<sup>24</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 115-7.

<sup>25</sup>Perhaps the correct word is *naylūfar* (nenuphar or water-lily). *Nīlūfar* or *nailufar* is the Arabic form of the Persian *nīlūfar*, derived from Sanskrit *nilotpala* meaning "blue lotus". This *nīlūfar* (transformed into "nenuphar" in French and English) today designates both the white nenuphar and the blue one. Maimonides. *Glossary of Drug Names*. p. 171. It is used by Ibn Jazlah for epilepsy. J.S. Graziani, *Arabic Medicine in the Eleventh Century*. p. 212.

<u>Names of the syrups</u>
<i>sharāb wardi mukarrar</i> (concentrated syrup of rose)
<i>sharāb tuffāḥ sadhiḥ</i> (plain apple syrup)
<i>sharāb tuffāḥ mukhaḍḍab</i> (dyed apple syrup)
<i>sharāb tuffāḥ fathī</i> (apple syrup as an appetizer)
<i>sharāb laymūn murammal</i> (flowing lemon syrup)
<i>sharāb iskanjabīl sādhiḥ</i> (plain <i>iskanjabīl</i> <sup>26</sup> syrup)
<i>sharāb iskanjabīl buzūṛī</i> (spiced oxymel syrup)
<i>sharāb iskanjabīl rummānī</i> (pomegranate oxymel syrup)
<i>sharāb ijjāṣ</i> (pear syrup)
<i>sharāb qarāṣiyā</i> (prune syrup)
<i>sharāb maybah</i> <sup>27</sup> <i>sādhiḥ</i> (plain quince syrup)
<i>sharāb maybah muṭayyibah</i> (sweet quince syrup)
<i>sharāb safarjal mumassak</i> (musk-scented quince <sup>28</sup> syrup)

<sup>26</sup>Perhaps it was a *iskanjabīn* or *sakanjubīn* which is an oxymel (a kind of syrup made of vinegar (*khall*) and honey. *Elias*. p. 307. *Hans Wehr*. p. 419. See Graziani, *Medical*. p. 213.

<sup>27</sup>*Maybah*, arabized Persian word which means quince. *Lane* 2:2745. *Maybah* was a special quince mixture used in medicine. Martin Levey, *Med. His.* p. 181.

<sup>28</sup>*Safarjal* (quince), a certain well known fruit abundant in the land of the Arabs. *Lane*. 1:1372.



<u>Names of the syrups</u>
<i>sharāb laymūn safarjalī</i> (lemon syrup with quince)
<i>sharāb dīnārī</i> (a kind of wine syrup) <sup>29</sup>
<i>sharāb uṣūl</i> (roots syrup)
<i>sharāb qashr aṣl hindibā</i> (peeled endive <sup>30</sup> root syrup)
<i>sharāb rummān ḥalw</i> (sweet pomegranate syrup)
<i>sharāb rummānī</i> (pomegranate syrup)
<i>sharāb shāhtaraj</i> <sup>31</sup>
<i>sharāb ṣandal</i> <sup>32</sup> <i>abyaḍ</i> (white <i>ṣandal</i> -wood syrup)
<i>sharāb ṣandalayn</i> (syrup made of two kinds of <i>ṣandal</i> -wood) <sup>33</sup>
<i>sharāb ʿawd</i> (aloes-wood syrup)

<sup>29</sup>*Sharab dīnārī*, a kind of wine or beverage so called in relation to Ibn Dīnār al-Ḥakīm, or because it is like the *dīnār* in its redness. *Lane.* 1:919.

<sup>30</sup>See *hindibā*, *hindabā*. *Lane.* 2:2884.

<sup>31</sup>*Shāhtiraj* or *shāhtaraj* are Arabic form of the Persian *Shāh tara*, which means "king of the vegetables" and designate fumitory. Maimonides, *Glossary*. p. 253. Martin Levey, *Med. His.* p. 181.

<sup>32</sup>*Ṣandal*, a species of trees, or a kind of wood, of sweet odour beneficial as a remedy for palpitation and for headache and for weakness of the hot stomach and for fevers. *Lane.* 2:1732.

<sup>33</sup>i.e. red and white sandal mixture. Martin Levey. *Med. His.* p. 181.

<u>Names of the syrups</u>
<i>sharāb balīlaj</i> <sup>34</sup>
<i>sharāb tamar hindī</i> (tamarind syrup), <i>sharāb lisān ḥaml</i> <sup>35</sup>
<i>sharāb barbārīs</i> (syrup of barberry) <sup>36</sup>
<i>sharāb ʿunnāb</i> (jujube syrup) <sup>37</sup>
<i>sharāb khashkhāsh</i> (poppy-seed syrup)
<i>sharāb ās</i> (myrtle syrup) <sup>38</sup>
<i>sharāb hilyawun</i> (asparagus syrup)
<i>sharāb iṣṭakhūday</i> <sup>39</sup>
<i>sharāb kudhbara bayr</i> (coriander syrup) <sup>40</sup>

<sup>34</sup>*Balīlaj*: myrobalana bellerica, a certain well-known Indian medicine very beneficial to the stomach. **Lane**. 1:246. Today, in the Middle East it is used to stimulate appetite. Graziani, **Medical**. p. 196.

<sup>35</sup>*Lisān ḥaml*, type of plant which resembles to the tongue of the lamb. *Lisān al-ʿArab*, vol. 17, p. 272. It is known as syrup of great plantain. Martin Levey. **Med. His.** p. 181. Graziani, **Medical**. p. 208.

<sup>36</sup>It is also well known as *amīr bārīs*. Maimonides, **Glossary**. p. 14-15. See also Martin Levey, **Med. His.** p. 181.

<sup>37</sup>According to Martin Levey it was syrup of grapes (*sharāb ʿinab*). Martin Levey. loc.cit.

<sup>38</sup>Myrtle: an evergreen shrub with pink or white flower and aromatic black berries. **Elias**. p. 44, **Hans Wehr**. p. 15. See Abū Ḥanifah Dīnawarī, **Book of Plants**. p. 210.

<sup>39</sup>According to Martin Levey it was syrup of French lavender. Martin Levey. op.cit.



<u>Names of the syrups</u>
<i>sharāb zufā</i> (hyssop syrup)
<i>sharāb nirjis</i> (narcissus syrup)
<i>sharāb khauk</i> (peach syrup)
<i>sharāb mufarriḥ</i> (a kind of anti-depressant syrup) <sup>41</sup>
<i>sharāb fākihah</i> (fruit syrup)
<i>sharāb rāwand</i> (rhubarb syrup)
<i>sharāb kāfūr</i> (camphor syrup)
<i>sharāb basbāyij</i> (a kind of syrup for stomach etc.) <sup>42</sup>
<i>sharāb na<sup>c</sup>na<sup>c</sup></i> (mint syrup)
<i>sharāb marāqayā</i> (?) <sup>43</sup>

<sup>40</sup>Perhaps the correct word was *kuzbara barrī*, a wild coriander. The term is used by Maimonides, which is known as *shāhtiraj* (fumitory) by others. Martin Levey, *Al-Kindī Medical Formulary*. p. 289. See also Maimonides, *Glossary*. pp. 128-9.

<sup>41</sup>A certain well-known (exhilarating) medicine which is given to a person who is in grief and in consequence of which he becomes happy; thus called by the physicians, and by others called *sulwān*. *Lane*. 2:2362. According to Martin Levey it was known as syrup of bugloss. Martin Levey. *Med. His.*. p. 181. See also Martin Levey, *Early Arabic Pharmacology*. p. 87.

<sup>42</sup>*Basbāyij*: common polypody, originally in Greek and Persian terms means "many feet". Maimonides calls this drug *salūraghlī* "having many feet". The root is aperient, alterative, used for intestinal digestion, rheumatic pains etc. Martin Levey, *Al-Kindī*. p. 243.

<sup>43</sup>Perhaps it was *marāq*, a kind of grapes, which are white, juicy and very sweet and are made into raisins. *Lane*. 2:1391-2. According to Martin Levey it was syrup of "soft ones". Martin Levey, *Med. His.*. p. 181.

<u>Names of the syrups</u>
<i>sharāb khall</i> (vinegar syrup)
<i>sharāb anjabār</i> <sup>44</sup>
<i>sharāb ḥummad</i> (sorrel syrup)
<i>sharāb ʿirq sūs</i> (licorice root syrup)
<i>sharāb idhkkhir</i> (syrup of aromatic rushes) <sup>45</sup>
<i>sharāb nāranj</i> (bitter orange syrup)
<i>sharāb najl</i> (syrup of couch grass)
<i>sharāb qaṭam</i> (?) <sup>46</sup>
<i>sharāb kushūt</i> (custuta syrup) <sup>47</sup>
<i>sharāb marās</i> (?) <sup>48</sup>
<i>sharāb tīn</i> (fig syrup)

<sup>44</sup>According to Martin Levey it was syrup of honeysuckle. Martin Levey, loc.cit.

<sup>45</sup>*Idhkkir*, or lemon-grass (*Andropogon Scheonanthus* I.). Max Meyerhof and G.P. Sobby, eds. *Al-Ghafiḳi's book of Simple Drugs*. Cairo. 1932. See also Martin Levey, *Al-Kindī*. pp. 225-6.

<sup>46</sup>Perhaps it was *katam* (phillyrea). *Al-Kindī* considers it as a drug for fatigue and watering of the eyes. Martin Levey, *Al-Kindī*. p. 323.

<sup>47</sup>A type of clinging plant. *Hava*. p. 656. According to Martin Levey it was syrup of dodder. Martin Levey, *Med. His.*. p. 181.

<sup>48</sup>Or *marsīn*, myrtle-tree, (rose of Jericho). *Hava*. 716. According to Martin Levey it was syrup of juniper and the text should read *rāsīn*. Martin Levey. loc.cit.

<u>Names of the syrups</u>
<i>sharāb afsantīn</i> (absinthe syrup) <sup>49</sup>
<i>sharāb ʿawsaj</i> (buckthorn syrup) <sup>50</sup>
<i>sharāb shīr khashak</i> (syrup of manna) <sup>51</sup>
<i>sharāb tīlt</i> (mulberry syrup)
<i>sharāb ʿunṣul</i> (syrup of squill)
<i>sharāb lisān thawr</i> (syrup of borage) <sup>52</sup>
<i>sharāb ʿasal</i> (syrup of honey)
<i>sharāb ʿadhbah</i> (syrup of tamarisk fruit)
<i>sharāb jummar</i> (syrup of the honey in the pit of the date)
<i>sharāb iskanjabīl ʿunṣulī</i> (syrup of squill oxymel)
<i>sharāb ḥaṣram munaʿnaʿ</i> (syrup of verjuice with mint)
<i>sharāb ʿaṣāt rāʿī</i> (syrup of knotweed)

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<sup>49</sup>Martin Levey. Ibid.

<sup>50</sup>African tea tree. *Elias*. p. 466. According to Martin Levey it was syrup of lycium. Martin Levey. Ibid.

<sup>51</sup>*Shīr khashak*. Martin Levey. loc.cit.

<sup>52</sup>A type of plant which resembles an ox-tongue. Ibn Manẓūr, *Lisān al-ʿArab*. vol. 17, p. 272. See also Graziani, *Medical*. pp. 208-9.

<b><u>Names of the syrups</u></b>
<i>sharāb amlaj</i> (syrup of emblic myrobalan) <sup>53</sup>
<i>sharāb ibrīsam</i> (?) <sup>54</sup>

These syrups vary in character according to their purposes. Each is composed of julep (*julāb*) with juice of the fruit (*mā' fākihah*) from which it takes its name or extract of the flower (*mā' zahr*), or what it includes of herbs or drugs. The julep is not the required ingredient for medicine. It is only used as a medium (*wasīlah*) for administering the fruit-juice, flower-water or drugs. The function of the julep is to convert the syrup to sweetness (*ḥalāwah*) which makes the taking of it more pleasant and its acceptance is quicker<sup>55</sup>.

The medicine must not be prepared to be used in pastilles, electuaries and medicinal powder (*safūfāt*)<sup>56</sup> until they had been inspected by a person who is well known for his experience and training in dealing with them. Beside that, the person is also required to have a good personality

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<sup>53</sup>*Amlaj*, emblic myrobalan. Martin Levey, *Al-Kindī*. p. 235.

<sup>54</sup>Perhaps it was *barsīm* or *birsīm*, the round or kidney shaped reddish seed of *barsīm baladī* (indigenous *barsīm*) which is sold in the bazaars of Cairo as fortifiant and tonic. Maimonides, *Glossary*. p. 243. See under *Qurt*.

<sup>55</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 117.

<sup>56</sup>Martin Levey, *Early*. pp. 81-2.

(*ahl khayr wa ṣalah*). In this manner, Ibn al-Ukhuwwah suggests that the *muḥtasib* had to compel the pharmacists and syrup makers to use the drugs mentioned in the *Dustūr* of Ibn Bayān<sup>57</sup>, or that of Ibn al-Tilmīdh<sup>58</sup>.

As we have mentioned earlier, adulteration of syrups and drugs occurs frequently. In this way, we find *ḥisbah* literature serves as a guide book for the *muḥtasib*, so that he would be able to identify the adulterated syrups. On some occasions, the works of *ḥisbah* also suggest various methods of testing the syrups. The works also provide some information concerning the types and methods for preparing the commonly known syrups.

With regard to rhubarb, according to Ibn al-Ukhuwwah, there are three kinds; two of them are known as old varieties, while the third is the new one. The two old varieties are the Chinese and the *Zanjī*<sup>59</sup>, and the new one is the Turkish. Chinese rhubarb is the best variety and it is

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<sup>57</sup>Abū al-Faḍl Dā'ūd ibn al-Bayān al-Isrā'īlī d. 634/1236. His treatise *al-Dustūr al-bīmaristānī fī al-adawīyyah al-murakkabah* in English is called "Common Hospital Procedures with Compound Drugs". Ibn al-Bayān was the physician to the Sultan al-Malik al-Adil. Ibn Abī Uṣaybi'ah, ii, 118. Brokelmann, ii, 896. Hājī Khalīfah, *Kashf al-Zunūn*, i, 753. See Martin Levey, *Med. His.*, p. 181. *Early*, p. 73.

<sup>58</sup>Amīn al-Daulah (al-Dīn) Abū al-Ḥusayn Hibatallāh ibn Sa'īd ibn al-Tilmīdh ibn Salamah d. 560/1165. Brokelmann, ii, 891. Ibn al-Tilmīdh was a Christian physician in Baghdad. He wrote two treatises on compound remedies, abstracted Galen's Simples, and wrote notes to Ibn Jazlah's *Minhaj*. See Martin Levey, *Med. His.*, p. 181. Ibn Abī Uṣaybi'ah, i, 259. See Ibn al-Ukhuwwah, *Ma'ālim*, p. 117.

<sup>59</sup>Negro or perhaps the Indian variety. Martin Levey, *Al-Kindī*, p. 337.



imported from China<sup>60</sup>. Those who bring it from China relate that it is the root of a plant resembling colocasion (*qulqās*)<sup>61</sup>. In appearance it resembles thick pieces of wood, each about the size of a man's palm or less. It is dust-coloured (*aghbar*) with blood-red (*ḥamrah qānī'ah*) from the outside, and the colour of its joint (*maqṭa'*) is yellow. As for the substance (*jawhar*) it is light (*khiffah*), soft (*rakhāwah*) and delicate (*hashāshah*). When some of it is chewed (*muḍigha*), it becomes sticky (*lazūjah*), and when eaten, it is found to have a depressive (*qabq*), bitterness (*marārah*) and sharpness (*ḥiddah*). When some portion of the chewed substance has been rubbed into one's hand, its colour changes to saffron yellow. The best variety is that when its substance is not thick (*kathīf*), its taste is not too strong and the joint is free from woodworm (*sūs*). Whenever the substance is thick and the taste is strong, then it has been adulterated. As for the *Zanjī* and the Turkish varieties, their colour, taste, smell and effect are inferior to the Chinese, and thus the *muḥtasib* must inspect and be able to identify all of them<sup>62</sup>.

As for agaric (*ghārīqūn*)<sup>63</sup>, the pure one can be known to have a white colour, lightness in weight and a bitter taste. It should not be

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<sup>60</sup>According to Martin Levey rhubarb is grown in China, Turkey, Russia, and in parts of India and Tibet. Martin Levey, *Al-Kindī*. p. 337. See under *manj*.

<sup>61</sup>A kind of Arum (*lūf*). Martin Levey, *Al-Kindī*. p. 331.

<sup>62</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 118.

<sup>63</sup>It is said that it grows in the interior of a rotting cedar. Martin Levey, *Al-Kindī*. p. 309.



distinguished by white colour only, because this can be adulterated by the use of a white dye, but with the taste and lightness of its weight as well. The drug also can be tested by putting it into the water, then stirring it until the solution is mixed. If it floats (*ṭafā*) then it is pure, but if most of it sinks (*rasaba*) to the bottom of the solution, then it is adulterated. The best variety of its kind is white smooth (*amlas*) and easily divided. Despite its acidity (*ḥarāfah*) it has a sweet taste, which is the female. In contrast, the male is not good in taste, hard and has very dark-coloured<sup>64</sup>.

With regard to an unadulterated *taranjabīn*<sup>65</sup>, it varies from white to rather red, the seeds are red and round, and the sap (*duhn*) is light. The taste is sweet inclined to the taste of *mann* (honey dew or manna) and it causes nausea (*taghthiyah*). It is also similar to the taste of calamus aromaticus (*qand*). When dissolved in hot water, it produces a small amount of fatty substances (*duhniyyah*) on top of the solution and at the bottom with a substance like a fine ground (*maqshūr*) almond (*lawz*) and has the smell of the almond. An adulterated substance does not have this kind of smell. The best of its kind is fresh and white, which is in a moderate warm

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<sup>64</sup>Ibn al-Ukhuwwah, *Maʿālīm*. pp. 118-9.

<sup>65</sup>Manna: *taranjubīn* in Persian means "honey of the dew" which may be found on a variety of plants. It is that which is called manna (*mann*) and one also calls it *rizq* ("provision"). Maimonides, *Glossary*. pp. 275-6. Graziani, *Medical*. p. 220.

condition, the mixture (*mizāj*) is deficient of sugar, and it is much sweeter and moist<sup>66</sup>.

*Shīr khushk*<sup>67</sup> is of two kinds and brought from Khurāsān. Its good variety is white, light in weight and has a "true" sweetness. When a small amount of it has been put on the tongue, its taste is very cool. The other is known as *bīrakhshak*<sup>68</sup>, which is white in colour, but is darker than the first. When some of it has been put on the tongue, it has only a slight sweet taste. Only a small amount of it can be sieved out (*nakhala*)<sup>69</sup>, and it leaves lots of dregs which look like gum (*ṣamgh*). Sometimes it has been adulterated with a substance known as *fanīdh*<sup>70</sup>, and the pure can be recognized as having a leaf from its tree and a shell (*qashr*). These are not to be found in the adulterated. Sometimes it had been sprinkled with a flour of *ḥawwārī*<sup>71</sup>, when it becomes emaciated (*ʿurira*). This should be tested by putting it on a white cloth (*khirqah*) between two hands, and the flour of an adulterated substance will then remain in the cloth, or to break

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<sup>66</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 119.

<sup>67</sup>Type of *taranjubin* (manna) called by the Persian "siracost" or dry milk. Maimonides, *Glossary*. p. 276.

<sup>68</sup>In another reading of Ibn al-Ukhuwwah it was *shīr khushk*. Ibn al-Ukhuwwah, *Maʿālim*. p. 119.

<sup>69</sup>Perhaps the correct reading is *nakhala* (to sieve out) not (*naḥala*) to be emaciated. Ibn al-Ukhuwwah. *Ibid*.

<sup>70</sup>*Fanīdh*, a sugar candy or sweetmeat. Al-Kindī employs sugar candy as a vehicle for simples in an electuary for a cough from catarrh. Martin Levey, *Al-Kindī*. p. 312.

<sup>71</sup>*Ḥawwārī*, a white farina without the bran. Martin Levey, *Al-Kindī*. p. 263.

it into pieces, and if the inside (*dākhil*) and the rest (*ḥaul*) are the same then it is good, if not, it is adulterated. This is obvious to an expert<sup>72</sup>.

As for cassia fistula (*khiyār shanbar*)<sup>73</sup>, the sale of new flakes (*fulūs*) must be forbidden as being harmful. It should be matured and be from three to ten years old and the same is applied to its honey<sup>74</sup>.

With regard to *sharāb fuqqa*<sup>75</sup>, it is of two kinds, *khaṣṣ* (special variety) and *khārijī* (foreign variety). The *khaṣṣ* is made of sugar (*sukkar*), pomegranate seed, aromatic spices (*afāwīh*) and perfume (*ṭīb*), and it is known as *aqsimā* ("the portion"). The *khārijī* is made of *qatṭārah al-ʿāl*<sup>76</sup>. Calamus aromaticus (*ʿaṣal al-qāṣab*) and *mursal* should be used in preparing them. Therefore, the makers of this kind of syrup should be compelled to use for every jug (*kūz*) of the *khaṣṣ* variety with one *ūqīyah*<sup>77</sup> of sugar (*sukkar*), a quarter *ūqīyah* of pomegranate seeds and

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<sup>72</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 119-120.

<sup>73</sup>A well known kind of tree, resembling a peach-tree and have a yellow flower, which is an Arabized Persian word. *Lane*. 1:831

<sup>74</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 120.

<sup>75</sup>A kind of syrup made of barley (*shaʿtr*) or fruits. *Munjid*. pp. 540-1.

<sup>76</sup>Regarding the *qatṭārah*, according to Ibn al-Ukhuwwah some of the cooks (*ṭabbākh*) have adulterated *muhallabiyat* (a halwa made of rice flour, milk and sugar) with a calamus aromaticus (*ʿaṣal al-qāṣab*) and said to the customer that it was a *qatṭārah*. Ibn al-Ukhuwwah, *Maʿālim* chapter 18, p. 107. In al-Shayzarī, some of the halwa-makers have mixed the honey with a calamus aromaticus (*ʿaṣal a-qāṣab*), which they called *qatṭārah*. Al-Shayzarī, *Nihāyah*. p. 40.

<sup>77</sup>An Egyptian weight equals to 37.44g. *Hans Wehr*. p. 34.

perfume. The mixture (*ḡarībah*) of the *kharijī* is that for every one hundred jug, one-third and eight *raṭl*<sup>78</sup> of Egyptian weight of the *qaṭṭārah*, together with aromatic spices and perfumes must be added<sup>79</sup>.

Barley-water (*mā' sha'īr*) should not be prepared expect in warm condition (*ḡārr*), that is to take clean barley and to sieve (*thufī*) it, then to crush and boil it into the fire. The substance will then be left to cool down. Then it should be purified and *asal qaṭṭārah*, aromatic spices, perfumes and rue (*sadhāb*)<sup>80</sup> are added to it. It is said that these substances are good to regain health and digest the food<sup>81</sup>.

In the preperation of the syrups, the *muḡtasib* should compel the syrup makers to have beside them a fly-wisk to chase away flies because they would contaminate the jug and water container (*wi'ā'*). This is because someone might take a sip (*maṣṣ*) in that contaminated jug and it would cause him to be nauseated<sup>82</sup>.

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<sup>78</sup>An Egyptian weight equals to 449.28g. *Hans Wehr*, p. 345.

<sup>79</sup>Ibn al-Ukhuwwah, *Ma'ālim*. pp. 120-1.

<sup>80</sup>Perhaps the correct reading is *sadhāb* not *sadāb*. Ibn al-Ukhuwwah, *Ma'ālim*. p. 121.

<sup>81</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 120.

<sup>82</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 121.

The *muḥtasib* should compel the syrup makers to wash their containers everyday. He should also require them to cover the containers and clean them with a rough palm-fibre (*khashn al-layf*) from the inside of the jug before filling it with syrups. The same is to be done to the containers of the barley-water<sup>83</sup>. The *muḥtasib* must inspect the syrup makers of their receptacles (*qirāb*) for their syrups of rose (*wardī*), nenuphar (*laynūfar*) and rose-water (*julāb*). When the *muḥtasib* finds that their receptacles had become soil with grease (*zaʿfrān*), he should warn the person concerned and compel him to wash them<sup>84</sup>.

The syrup makers should shut their shops during the night with a gate to be made of cane (*qaṣab*) or palm branches (*jarīd*) in order to keep out the dogs. The same is applied to the containers, when grown old and smelling, the *muḥtasib* should order them not to use it and to change its tin (*qaṣdīr*) for every three months and to evaporate it before refilling. All these must be inspected by the *muḥtasib*<sup>85</sup>.

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<sup>83</sup>Ibid.

<sup>84</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 120.

<sup>85</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 121.

## 6.2. The duty to supervise the druggists (*ʿaṭṭārīn*)

Ibn al-Ukhuwwah states that the discussion on this matter is amongst the most important matters with which the *muḥtasib* must pay attention (*ʿitināʾ*) and scrutiny (*kashf*). The *muḥtasib* must not permit anyone to buy drugs (*ʿaqāqīr*) and kinds (*aṣnāf*) of perfumery (*ʿiṭr*)<sup>86</sup>, except for those who have knowledge (*maʿrifah*), experience (*khibrah*) and practical skill (*tajribah*). They must also be trustworthy (*thiqah*) and reliable (*amīn*) in their religion with fear of God. This is because drugs (*ʿaqāqīr*) are normally bought from the druggists (*ʿaṭṭārīn*) in a simple form (*mufradah*), which then will be compounded. Sometimes an ignorant person might buy a drug with the intention that it was what he needed and then sell it to another ignorant person convinced of its benefits. However, it may be the opposite of what is required and cause harm. The situation is very perilous because as mentioned before drugs are of various natures (*ṭabāʾiʿ*) and mixtures (*amzajah*), and the cures (*tadāwī*) are dependent on the type of mixed ingredients. Thus, when another substance is added to them it changes the quality of the mixture. Therefore, Ibn al-Ukhuwwah suggests that the *muḥtasib* must inspect these adulterations of the drugs

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<sup>86c</sup> *Iṭr* synonym of *ṭīb*; denotes perfumes, an odoriferous or fragrant substance. *ʿIṭarah* in the present day and in the medical books signifies perfumes and drugs. *Lane*. 2:2078. *Hava*. p. 480. *Munjid*. p. 512. *Lane*. 2:1669. *Ṣaydalah* designates to the trade of *ʿiṭarah* (i.e. drugs and perfumes).



by the druggists (*ʿaṭṭārīn*)<sup>87</sup>. Ibn al-Ukhuwwah then begins by elaborating various methods of adulterating the drugs and the ways to identify them.

Some of the druggists have adulterated *ṭabāshīr*<sup>88</sup> with burnt bone (*ʿiẓam maḥrūq*) and this can be distinguished by putting it in water, where the bone will sink (*rasaba*) and the *ṭabāshīr* will float (*ṭafā*). The best of its kind is light in scale, white in colour, can be easily skinned (*sariʿ tafarruq*)<sup>89</sup> and crushed (*saḥaq*). It is cold and is astringent in taste (*qabḍ*)<sup>90</sup> with slight dissolution (*yasīr taḥlīl*)<sup>91</sup>.

With regard to male frankincense (*lubān dhakar*)<sup>92</sup>, some of the druggists have adulterated it with gum (*ṣamigh*)<sup>93</sup> and colophony

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<sup>87</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 121-2.

<sup>88</sup>*Ṭabāshīr* is a Persian word which designates "bamboo manna", crystalline concretions that one extracts from the internodes of bamboo. They are composed of silica, potash, lime and organic substances. Some say that the term (*ṭabāshīr*) is also used for ivory or calcinated bone with which one falsifies the true bamboo manna. According to Maimonides it is called "ash of the serpent" *ramād al-ḥayya*. Maimonides, *Glossary*. p. 122. It is also said that the *ṭabāshīr* is a bluish white, hard, light substance and forms a kind of glass when fused with alkalines. Martin Levey, *Al-Kindī*. p. 300.

<sup>89</sup>*faraka*. *Hava*. p. 559.

<sup>90</sup>*Qabḍ*; a medicine, food etc, that is astringent. *Lane*. 2:2482. *Hava*. p. 584.

<sup>91</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 122.

<sup>92</sup>Also known as *kundur* in Persian. Maimonides, *Glossary*. p. 132.

<sup>93</sup>*Ṣamigh*: Gum arabic, Dioscorides calls it Aqaquya. In Egypt, it is gum arabic of *Acacia sperocarpay*. It may be obtained from *Acacia nilotica*, *Minosa nilotica* - true Egyptian acacia and *Acacia Senegal*. Maimonides calls the *Acacia* tree, *al-shawkah al-miṣriyyah*, *al-shawkah al-ʿarabiyyah* and *aghaylan*. *Tuḥfāt al-Aḥbāb* gives a synonym of the tree as *al-Talh*. Graziani,

(*qalafūniyah*). However, this can be identified by putting it in the fire, where the colophony will burn and its smoke produces a pleasant smell (*faḥa*). The druggists also have adulterated tamarind (*tamr hindī*)<sup>94</sup> with wax (*shama*<sup>c</sup>), salt and vinegar (*khalī*). The adulteration becomes apparent when the drug decays (*ʿafuna*). They also have adulterated costus (*qasṭ ḥalw*)<sup>95</sup> with elecampane roots (*aṣl al-rāsin*)<sup>96</sup> and signs of its adulteration can be known because the former has a certain smell and taste when put on the tongue as opposed to the latter<sup>97</sup>.

As for *zaghab*<sup>98</sup> of nard (*sunbul*)<sup>99</sup>, some of the druggists have

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*Medical*. p. 216.

<sup>94</sup>There are two suggestions, *thamar hindī* (Martin Levey and Graziani) and *tamr hindī* (Maimonides). Both are referring to tamarind *Tamarindus indica* L., Leguminous plants indigenous to India. Maimonides calls the tree *al-ḥumar* and the fruit, *al-ṣubar*. Tamarind yields a very astringent substance prescribed for chest complaints, acute fever etc, and also used as a laxative and mouthwash. Maimonides, *Glossary*. pp. 271-2. Martin Levey, *Al-Kindī*. p. 251. Graziani, *Medical*. p. 220.

<sup>95</sup>*Qusṭ*; costus. According to Maimonides it is *al-bustaj*, which is derived from the Persian *bustak*, meaning "incense". In the account of Meyerhof, the aromatic odour of the costus reminds one of the carnation. It is used in fumigation and as an expectorant and antiasthmatic. Martin Levey, *Al-Kindī*. p. 316. Maimonides, *Glossary*. pp. 236-7. Lane. 2:2523. *Munjid*. p. 628.

<sup>96</sup>*Rāsin*; elecampane which had been prescribed since Dioscorides for the stomach. Maimonides says it is the ginger of Syria (*zanjabīl shāmī*). According to Meyerhof, this drug is the thick and fleshy underground portion of the stem, not the root, as Ducros claims. It is aromatic, tonic and stimulant. In Egypt, the druggists sell the dried, brown and wrinkled stem under the name *ʿirq al-janāh*. Martin Levey, *Al-Kindī*. p. 270. Maimonides, *Glossary*. pp. 248-9. Lane. 1:1086.

<sup>97</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 122.

<sup>98</sup>A kind of down that covers flowers of a plant (*barāʿim nabāt*) when they first appear especially that of grapevine. The Arabs and the Indians used this kind of down from date palm to make fabrics. *Munjid*. p. 299.

adulterated it with colocasia (*qulqās*)<sup>100</sup>. The adulteration can be known by putting the substance into the mouth, where the person will become nauseous (*ghathā*) and it stings (*ḥaraqqa*)<sup>101</sup>.

Opium (*afyūn*)<sup>102</sup> which is a soporific (*marqad*)<sup>103</sup> is usually adulterated with plain pounded herbs (*bāqalā' yābis madqūq*). Some say that lentils (*ʿadas*) were used instead of that. It is made from the juice of a black Egyptian poppy (*ʿaṣārat khashkhash aswad misrī*). The best of its kind must be thick (*kathīf*), sedative (*razīn*) and bitter (*murr*) with a very strong smell which can be easily dissolved (*sahl inḥilāl*) in hot water and softens (*hashsha*) in the heat of the sun. It is white inclining toward slight redness and its taste has a certain bitterness (*marārah*) and astringency

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<sup>99</sup>*Sunbul*; nard, which is of many kinds, namely the Greek, Indian etc. The word nard is derived from the Sanskrit *nalada* meaning "fragrant". According to Meyerhof, in Egypt the ear of the true Celtic nard is rarely sold in the bazaars. More frequently sold is the "rhizome" of the Indian nard, which is the Valerianaceous plant, an Indian drug originating from the mountain of Nepal. It is used for epilepsy, convulsion etc. Martin Levey, *Al-Kindī*. pp. 286-7. Maimonides, *Glossary*. pp. 177-8. *Lane*. 1:1440.

<sup>100</sup>The colocasia or arum colocasia; the root of a plant which is eaten and used medically. The word *qulqās* has not been mentioned by Kindi or Maimonides, only the *Tuḥfat al-Aḥbāb* gives synonyms as *irni* and *lūf* (arum). It is used to destroy nasal polyps, to cause abortion, and is good for convulsion, coughs and gout. Martin Levey, *Al-Kindī*. p. 331. See Maimonides (*lūf*), *Glossary*. pp. 145-6. *Lane*. 2:2560. *Hans Wehr*. p. 787.

<sup>101</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 123.

<sup>102</sup>*Afyūn*; opium is the milky exudation of the poppy obtained by incising the unripe capsules of the family Papaveraceae when approaching maturity. The juice is allowed to harden overnight, then is scraped into a receiver. It turns greyish in colour, tough like plastic when fresh and it hardens by age. It has a strong characteristic odour, bitter taste and is a narcotic. According to Maimonides some people call it *al-marqad* instead of *al-murqid* "the soporific". Graziani, *Medical*. p. 193. Maimonides, *Glossary* (*Ufiyūn*). p. 26.

<sup>103</sup>An opium which is lulling and soporific. *Munjid*. p. 274. *Hava*. p. 265.

(*qabḍ*). It is easy to dissolve (*ḥall*) and purified. The adulterated substance can be known when there are dregs (*thufl*) remaining in it. It is adulterated with *māmīthāh*<sup>104</sup>, wild milk of lettuce (*laban khass*<sup>105</sup> *barrī*) and gum (*ṣamgh*)<sup>106</sup>. What is adulterated with gum becomes very sparkling and pure<sup>107</sup>.

The druggists also have adulterated blue bdellium (*muql azraq*)<sup>108</sup> with strong gum (*ṣamgh qawī*). This can be distinguished because the Indian variety has a certain strong pure smell (*rā'ihah ṭāhirah*)<sup>109</sup>. Some of them have adulterated *lubān* bark with that of pine (*ṣanawbar*)<sup>110</sup>. This can be tested and distinguished by throwing it in the fire, when it

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<sup>104</sup>*Māmīthah*: Horned poppy or corn poppy; Ibn Jazlah describes it as yellow to black with fragrant odour and bitter taste. *Tuḥfat al-Aḥbāb* states that it is a juice extracted from a medicinal plant of good odour, bitter in taste, and having a colour between yellow and red. Martin Levey, *Al-Kindī*. p. 332. Graziani, *Medical*. p. 209.

<sup>105</sup>See *khass* or *khash* (lettuce). Martin Levey, *Early*. p. 65.

<sup>106</sup>See previous note.

<sup>107</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 123.

<sup>108</sup>According to Abū Ḥanīfah al-Dīnawarī, *muql* is a type of gum arabic (*ṣamigh*) and its tree is known as *kūr*. Abū Ḥanīfah al-Dīnawarī, *Book of Plants*. p. 89. Maimonides states that *muql* is applied to the resin of this type of tree (*kūr*) and there are Indian, Arabic and Sicilian. The resin is called *muql azraq* ("blue bdellium") and *muql Yahūd* ("Jewish bdellium"). One sells both types in the bazaar of Cairo under the name *ṣamigh muql*. They are used against coughing, snake bites, haemorrhoids and for the purification of the uterus, etc. Maimonides, *Glossary*. pp. 158-9. Martin Levey, *Al-Kindī*. p. 336.

<sup>109</sup>In another version of Ibn al-Ukhuwwah this can be translated as by means of evaporation (*tabkhūr*). Ibn al-Ukhuwwah, *Ma'ālim*. p. 123.

<sup>110</sup>There are two types, male and female. The male has no fruits and the female is of two types; one produces large seeds, the other small seeds. The small seeds are those which are called *qadm Quraish* and *kirkir* and *bītus* (*pitys*). Apart from being prescribed as a remedy for all sorts of illnesses, the pine (*ṣanawbar*) was used for its resin in fumigation. Maimonides, *Glossary*. p. 216. Martin Levey, *Al-Kindī*. p. 299.



burns, if it exhales a pleasant odour (*fāḥā*), it is unadulterated (*khāliṣ*), if not, it is adulterated<sup>111</sup>.

Some of them have adulterated hairy saffron (*al-za<sup>c</sup>farān al-sha<sup>c</sup>rī*)<sup>112</sup> with chicken or cow flesh after it had been boiled in water, then sprinkled it with salt, dried it out and mixed them together. The sign of its adulteration is to take out some of the substance and soak it in a vinegar, if it becomes agitated (*taqalluṣ*)<sup>113</sup> then it is adulterated, and vice versa. They have adulterated ground wheat (*maṭḥūn*)<sup>114</sup> with safflower or coarsely crushed grain (*jarīsh*)<sup>115</sup>. The adulteration is obvious by dissolving some of the mixture and putting it in a piece of cloth (*khirqah*), whereby some of the mixture which does not descend will remain in there. The test can be made by taking some of the saffron and dissolving it in water, whereby the adulterated substance will sink<sup>116</sup>.

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<sup>111</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. p. 123.

<sup>112</sup>*Za<sup>c</sup>farān*; saffron. According to Maimonides, it is also known as *al-jadt* and *kurkum*. The saffron was a precious material and consequently subjected to falsification. The deep orange colour of a dried stigma of saffron is used as a stimulant in medicine. Saffron yellow or other colour substances were used in alchemy. Also the dried red stigmas is used as a colouring agent in medicine. Graziani. *Medical*. p. 222. Maimonides, *Glossary*. p. 97. Martin Levey, *Al-Kindī*. pp. 275-6.

<sup>113</sup>becomes agitated by tendency to vomit, synonym to *ghathā*. *Lane*. 2:2559. *Hava*. p. 624.

<sup>114</sup>which had been finely ground and fit to eat. *Lane*. 2:1832.

<sup>115</sup>*Hava*. p. 85. *Munjid*. p. 87.

<sup>116</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. pp. 123-4.

Some of the druggists have adulterated musk (*misk*)<sup>117</sup> with Turkish rhubarb (*rāwand turkī*)<sup>118</sup> or "dragon blood" (*dam al-akhawayn*)<sup>119</sup> and *rāmik*<sup>120</sup> *al-qāṭir*<sup>121</sup> placed in musk-pod (*nāfijah*). The adulteration can be distinguished by crushing (*saḥaqa*) them in the rose water (*mā wardī*), whereby the water will turn to red and the Turkish rhubarb will float in the surface of the rose water because it is a wood (*khashab*). When crushed, an unadulterated musk will have strong

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<sup>117</sup>Musk is the dried secretion from the preputial follicles of the musk deer, *Moschus moschiferus*. The musk deer is a small animal which inhabits a large area in Central Asia. The male animal, which alone produces the musk, bears on its belly, a small sac produced by an infolding of the skin. This sac is the musk sac or musk pod, and it contains a soft, unctuous, brownish substance, musk, which is remarkable for its intense, penetrating and persistent odour. The animals are snared or shot, and the musk pods cut out trimmed and dried; they are then wrapped singly in paper and packed about twenty-five together in a small rectangular box covered with silk; this box is known as a "caddy". Most of the musk is obtained from Tibet and Chinese provinces of Szechuen and Yunan. The musk pods are examined by probing them with a knife and classified them into piles. Musk is liable to gross adulteration. The pods are skiffily opened, part of the musk is removed and replaced by some worthless substitute. Inorganic substances, such as small stones, leaden shot, etc are easily detected. Dried blood would yeild a red ash, whereas the ash of genuine musk is whitish. Resin and other substances in soluble spirit would be recognised by the increase in the alcoholic extract. Henry G. Greenish, *Textbook of Materia Medica*. London 1909. pp. 607-610. See Martin Levey, *Al-Kindī*. pp. 310-11. Graziani, *Medical*. p. 210.

<sup>118</sup>*Rāwand*; rhubarb, see also *manj*; rhubarb. *Manj* is a Persian word. Rhubarb is grown in China, Turkey, Russia, and parts of India and Tibet. Martin Levey, *Al-Kindī*. p. 337. Graziani, *Medical*. p. 214. However, according to Greenish, the term of Turkey and East Indian rhubarb indicate nothing more than the routes by which the drug formerly found its way to the European market. He added that the drug was collected in Tibet and China. Henry G. Greenish, *Materia Medica*. pp. 415-7.

<sup>119</sup>*Dam al-akhawayn*; a resin from various plants of the lily family. Maimonides gives other names such as *qāṭir* "the distilled". This resin brought from Malacca, Indochina and Somaliland, is still used today in powder form as a hemostatic and cicatrizing agent in Egypt. Martin Levey, *Al-Kindī*. p. 268.

<sup>120</sup>An electuary of gallnut with aromatic drugs. According to Ibn Jābir, *rāmik* consists of gallnut, unripe dates, bark of pomegranate, musk and others. In the *Tuḥfat al-Aḥbāb*, *rāmik* is considered to be a confection composed of gallnut, such aromatic drugs as mastic, benjamin and others. Martin Levey, *Al-Kindī*. p. 270.

<sup>121</sup>*Qāṭir* is a term used by Maimonides to designate dragon blood (*dam al-akhawayn*). Maimonides, *Glossary*. pp. 74-5.



odour and percolate (*rashaḥa*). Another method of the adulteration of musk is when the musk-pod (*nāfijah*) is made of bark (*qushūr*) of *amlaj*<sup>122</sup> and Indian (*hindī*) *shīṭaraj*<sup>123</sup> with *sādarwan*<sup>124</sup>. Then they knead the mixture with water and pine gum resin (*ṣamigh ṣanawbar*), and they produce the musk from this and other similar substances. They collect the musk-pod (*nāfijah*) from this and they cover the top of it with gums, then dry it out in the oven (*tannūr*). Signs of adulteration of all kinds of musk-pods can be recognized by opening them and striking (*lathama*) them like *mutaḥassā*<sup>125</sup>. If it appears to have a certain sharpness (*ḥiddah*) like fire, then it is of an outstanding quality (*fahl*)<sup>126</sup> and free from adulterated substances like blood and others. If it is the opposite, then it is adulterated. In order to distinguish the adulteration of all kinds of musk, it is necessary to put some of it in your mouth, then to spit (*tafala*) it on a white shirt and to shake it off. If after the shaking, the shirt does not change its colour,

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<sup>122</sup>Emblie myrobalan, fruit of *Phyllanthus emblica* L. Al-Kindi uses emblie myrobalan in musk recipes. The drug is originally imported from China and India. Martin Levey, *Al-Kindī*. p. 235.

<sup>123</sup>*Shīṭaraj* or *sīṭaraj*; pepperwort or rose-coloured leadwort. This must not be confused with *shāḥṭiraj*. The plant is indigenous to Java, Ceylon and India. Martin Levey, *Al-Kindī*. pp. 296-7.

<sup>124</sup>Uncertain. The *Tuḥfat al-Aḥbāb* calls it the gum of an old oak, and gives a synonym as *al-sindiyan*. Al-Kindi uses it in drug for canker, looseness of the gum and for a fistula. M. Levey, *Al-Kindī*. pp. 278-9. According to Maimonides it is a kind of cherry and also known as *sarāsiyā* and *ḥubb al-mulūk* (seed of the kings). Others say *sādurwān* or *siyāh dawārān* is a gum which furnished a black colouring material. Maimonides, *Glossary*. pp. 263-4.

<sup>125</sup>Uncertain; perhaps it is to dig (*ḥasiya* syn. *iḥṭafara*) or to put something to test (*ḥasiya* syn. *ikhtabara*). *Munjid*. p. 134. However, al-Shayzarī reads it as *al-mutaḥaththā* (i.e. to scatter). Al-Shayzarī, *Nihāyah*. p. 48. Ibn al-Ukhuwwah, *Maʿālim*. p. 124.

<sup>126</sup>*fahl*; of an outstanding quality. *Lane*. 2:2345-6. *Hava*. p. 549. *Munjid*. pp. 570-1.

then it is unadulterated either by blood or the like and vice versa. Some of the druggists have ground the musk together with gazelle blood and gather it in the animal's guts (*muṣṣrān*). Others have adulterated it with burnt bread and others with burnt liver (*kubūd*)<sup>127</sup>.

As for Damascus rose-water (*al-mā ward al-dimashqī*), the druggists have adulterated it by applying a small amount of water with ten *raṭl* of *ḥanẓal*<sup>128</sup> and *shabb*<sup>129</sup> pulp (*shaḥm*) until it is given an astrigence (*ʿufūṣah*) and bitterness (*marārah*). The adulteration can be distinguished by taste<sup>130</sup>.

Ambergris (*ʿanbar*)<sup>131</sup> paste (*maʿjūn*) is adulterated by adding wax (*shamʿ*) to it. The adulteration can be determined by heating a large needle

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<sup>127</sup>Al-Shayzarī, *Nihāyah*. pp. 49-50. Ibn al-Ukhuwwah, *Maʿālim*. pp. 124-5.

<sup>128</sup>*Ḥanẓal*; colocynth (*citrullus colocynthis*). A type of plant which grows on the ground and its fruit resembles water melon, but much smaller. It is used in medicine and has a bitter taste. Martin Levey, *Al-Kindī*. p. 315. *Munjid*. p. 158. *Hans Wehr*. p. 210.

<sup>129</sup>*Shabb*; alum, a kind of tree with a bitter taste and a certain well known medicine. *Lane*. 2:1493. Martin Levey, *Al-Kindī*. pp. 291-2.

<sup>130</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 125.

<sup>131</sup>Amber should be distinguished from ambergris. The former is a hard clear yellowish-brown gum used for making ornaments or jewellery. It is the fossil resin of certain extinct Coniferous trees. While the latter is a wax-like substance present in the intestines of sperm-whales used as a fixative in perfumery. Gray, *Pharmacology*. pp. 232-4. Grennish, *Materia Medica*. pp. 522-3. See also Graziani, *Medical*. p. 194 (*ʿanbar*: Amber). Martin Levey, *Al-Kindī*. p. 307 (*ʿanbar ṣandalānī*: Ambergris of the apothecaries). *ʿAnbar*: ambergris. *Hava*. p. 503. *ʿAnbar*: ambergris; a certain odoriferous substance, an excrement found in the belly of a certain great fish. *Lane*. 2:2168.

(*misallah*) and piercing (*shakk*) it into a bead (*kharzah*)<sup>132</sup> of the ambergris, if it flows (*sāl*) over the large needle, then it is a wax, but if the bead breaks (*inkasara*) and a green herbage (*ushb*) became apparent, then it is ambergris. The druggists also have adulterated the ambergris with a substance called *lisān ḥubb al-ʿuṣfūr*<sup>133</sup>. The adulteration can be known by putting it into a fire, where the *lisān al-ʿuṣfūr* will become hardened (*taṣalaba*). It can also be known by putting it into water, if it becomes emaciated (*naḥala*) then it is *lisān ʿuṣfūr*<sup>134</sup>.

Some of the druggists have adulterated *zubdah*<sup>135</sup> with *zufr maḥlūl*<sup>136</sup>. The adulteration can be known because those with *zufr* will become solid and only a pure civet will produce a delicate substance in one's hand with such a strong odour<sup>137</sup>.

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<sup>132</sup>There are two other optional readings and both are rather inaccurate; *jazrah*: blood sacrifice, and *ḥirzah*: amulet. Ibn al-Ukhuwwah, *Maʿālim*. p. 125.

<sup>133</sup>*Lisān al-ʿuṣfūr*; a type of plant called honey-wort. *Hava*. p. 685.

<sup>134</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 125.

<sup>135</sup>Perhaps the correct term is *zabād* meaning civet. Civet is secreted by the civet cat, in follicles near the anus. Its smell is unpleasant unless diluted and is used in perfumery to augment the smell of other substances. Al-Shayzarī also uses the term *zabād*. Al-Shayzarī, *Nihāyah*. p. 51. *Hans Wehr*. p. 372. Gray. *Pharmacology*. p. 233. *Hava*. p. 283.

<sup>136</sup>Uncertain. Perhaps it is similar to *zufr al-ṭayyib* and *zufr al-ʿifrīt* which are an odoriferous substance added to insence (unguis odoratus). *Lane*. 2:1913. *Hava*. p. 446.

<sup>137</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 125.

Preserved (*murabbā*) *halīlaj*<sup>138</sup> is adulterated by putting it in a bright green watermelon (*baṭṭikh*)<sup>139</sup> for one day. When this has become tender, honey (*ʿasal naḥl*) and pulp (*rub*) of carob (*kharrūb*) are added to it. The adulteration can be known by taste and colour because normally it has a black colour and abundance (*ʿīzār*) of fleshy substance. As for the adulterated substance the fleshy substance is scarce and the colour changes, also it has a strong taste<sup>140</sup>.

As for ambergris (*ʿanbar*), some of the druggists have produce it from a brownish liquor of the cuttle fish (*zubd al-baḥr*)<sup>141</sup>, a black gum (*ṣamigh aswad*)<sup>142</sup>, a white wax (*shamaʿ abyad*), a sandarach (*sandarūs*)<sup>143</sup>, an aloe-wood (*ʿūd*) and a nard (*sunbul*)<sup>144</sup>. It may be produced on its own or to mix it with other similar substances as a

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<sup>138</sup>*Halīlaj*; Black or kabul chebolic myrobalan. Probably *Terminalia chebula* Retz or *T. citrina* Roxb. It is generally used as a purgative. The Persians call it *halīlah siyāh*, in Arabic it is sometimes *ahlīlaj aswad*. The tree is indigenous to India. Maimonides gives the Indian synonym as *hārsar*. Martin Levey, *Al-Kindī*. p. 342.

<sup>139</sup>See *baṭṭikh aḥḍar* ("green melon") called by the Egyptian which is of several species. Maimonides, *Glossary*. pp. 41, 76. See Martin Levey, *Al-Kindī*. pp. 314-5.

<sup>140</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 125-6.

<sup>141</sup>This also signifies a cuttle fish bone, jellyfish and others. The Arabic name meaning "ecumen of the sea" may refer to many different things. Martin Levey, *Al-Kindī*. p. 272.

<sup>142</sup>Maimonides, *Glossary*. p. 186. Martin Levey, *Al-Kindī*. p. 234.

<sup>143</sup>*Sandarūs*; the sandarach of *Callitris quadrivalvis*, indigenous to northwest Africa is a resin exuding from the stems. It is used today as incense and as a remedy for diarrhea in Morocco and Egypt. Martin Levey, *Al-Kindī*. p. 287.

<sup>144</sup>*Sunbul*; nard. *sunbul al-ṭīb*; Indian nard. Martin Levey, *Al-Kindī*. pp. 286-7.



fraudulent substitutes. It should be mentioned here that according to al-Shayzarī, the adulteration can be known by heating the ambergris which will produce a certain distinct smell<sup>145</sup>. Meanwhile, Ibn al-Ukhuwwah suggests three kinds of tests; by piercing a hot needle into it, by putting it in water and by smelling it<sup>146</sup>.

Some of the druggists have adulterated Indian aloe-wood (*ʿūd hindī*), by using a sandalwood (*ṣandal*)<sup>147</sup> instead. First they let it cool down until it looks similar to the Indian aloe-wood, then they soak (*naqaʿa*) it in a cooked old grape vine (*karm*)<sup>148</sup>, put some perfume on it (*rawwaḥa*) and mix it with the Indian aloe-wood. The adulteration can be known by throwing them in a fire, where the smell of the sandalwood will be obvious. Some of the druggists produce the aloe-wood from a certain bark of wood, which is called *al-iblīn*<sup>149</sup> by soaking it in rose water prepared with musk

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<sup>145</sup> Al-Shayzarī, *Nihāyah*. p. 51.

<sup>146</sup> Ibn al-Ukhuwwah, *Maʿālim*. p. 125.

<sup>147</sup> In India, for centuries sandalwood has been prescribed by Vytians in remittent fever and gonorrhea. The white sandalwood grows in Sumatra, Siam and Malacca. The sandalwood of the eastern islands is inferior to that of Malabar. In India, the Arabs place sandalwood among their cardiaca. Al-Kindi employs sandalwood in many types of perfumery operations. In modern Egypt, the white sandalwood is used as an aromatic for gonorrhea. Martin Levey, *Al-Kindī*. pp. 298-9.

<sup>148</sup> Martin Levey, *Al-Kindī*. p. 326. Maimonides, *Glossary*. pp. 211-213.

<sup>149</sup> Unknown. In another version of Ibn al-Ukhuwwah, *al-iblīz* has been suggested but it seems rather inappropriate because the word means a kind of clay used in medicine. Maimonides, *Glossary*. p. 122. *Hava*. p. 45. *Munjid*. p. 48. However, al-Shayzarī has given another reading; *al-iblīq*: a kind of wood that has two colours, white and black. Al-Shayzarī, *Nihāyah*. p. 54.

and camphor (*kāfūr*)<sup>150</sup> for one day. They then remove it from the mixtures, boil it and put some perfume on it. Similarly, some use a wood from an olive tree. The adulteration can be known by putting it in a fire and the result cannot be concealed<sup>151</sup>.

As for camphor (*kāfūr*), some use a splinter (*naḥātah*) of *kharrāṭīn*<sup>152</sup>, while others knead the camphor with water of a white gum and evaporise them on a sieve (*gharābīl*). Some have used salt taken from stones of sal ammoniac (*nūshādir*)<sup>153</sup> by breaking it into small pieces and mixing it with the camphor. Some have employed a stone (*nawan*) of a date (*balah*) by crushing it until it looks like froth (*zabad*). Then they patterned the crushed date stone similar to the shape of the camphor by kneading it with camphor liquid and spreading it out thinly like camphor. Adulterations of the camphor, which have been mentioned and those which have not can be known by throwing them in the water, if the camphor sinks, then it is adulterated. If the camphor floats, then it is pure. The adulteration can also

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<sup>150</sup>*Kāfūr*; Camphor. The tree is indigenous to China, Japan, Sumatra and Borneo. In Sanskrit it is called *kappūra*, *kaafur* in Malay, and *kupoor* in Hindu. Ibn Māsawaih considers camphor as one of the five most important aromas. Martin Levey, *Al-Kindī*. p. 321. Maimonides, *Glossary*. pp. 142-3.

<sup>151</sup>Ibn al-Ukhuwwah, *Maʿālim*. pp. 125-6.

<sup>152</sup>*Kharrāṭīn*: Turner. *Lane*. 1:723-4. Al-Shayzarī reads it as *nakhālat rukhām al-kharrāṭīn al-mudabbar* (a sieved marble prepared by the turners). Al-Shayzarī, *Nihāyah*. p. 51. Ibn al-Ukhuwwah, *Maʿālim*. p. 126.

<sup>153</sup>Martin Levey, *Al-Kindī*. p. 341. Graziani, *Medical*. p. 212. According to Gray, sal ammoniac is a kind of neutral salt, manufactured by subliming the soot formed by burning camel's dung. Gray, *Pharmacology*. p. 280.



be known by putting some of it on a piece of cloth (*khirqah*), then putting it over a fire, where a pure camphor will disperse (*ṭāra*) and does not remain firm (*thabata*). An adulterated one, however, will burn and turn to be sandy<sup>154</sup>.

As for lapis lazuli (*lāzuward*)<sup>155</sup>, if thrown in a fire, the pure one turns to be blue in colour and does not evaporate (*ṣa<sup>c</sup>ada*). If adulterated, it will evaporate and burn. The adulteration is prepared by heating (*mashwī*) it up in a Moroccan glass (*zuḡāj maghribī*) with Indian indigo (*nīl hindī*) and soft limestone (*jīr*<sup>156</sup> *rukḥāmī*<sup>157</sup>) at a moderate heat. However, the adulteration will become apparent in the fire<sup>158</sup>.

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<sup>154</sup>Al-Shayzarī, *Nihāyah*. p. 51. Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. p. 126.

<sup>155</sup>*Lāzuward* or *lāzaward*; lapis lazuli. Ibn al-Bayṭār makes a distinction between *lāzuward* and *armāniyā*, where he said the former is a solid stone and the latter is the soft stone of Armenia. It is prescribed for pain in the bladder (*mathānah*), to remove warts (*ma<sup>c</sup>ālīl*), beautify eyelids (*ashfār*) and to curl the hair. Ibn al-Bayṭār, *Al-Jāmi<sup>c</sup> lī mufradāt al-adawiyyah wa al-aghziyyah*. 2:360-1. See S. Frederick Gray. *Pharmacology in general*. London, 1824. p. 434. *Hans Wehr*. p. 852.

<sup>156</sup>*Jīr*; limestone. See *nūrah* (quicklime). The lime or quicklime is a white substance obtained by heating limestone. Maimonides, *Glossary*. p. 175. Martin Levey, *Al-Kindī*. pp. 340-1. See *Lane*. 1:493.

<sup>157</sup>*Hava*. p. 246.

<sup>158</sup>Ibn al-Ukhuwwah, *Ma<sup>c</sup>ālim*. p. 127.

Scammony (*maḥmūdah*)<sup>159</sup> is adulterated with a milky juice of the latex plants (*yuttūʿ*)<sup>160</sup>. Sometimes, vetch flour (*al-kirsannah*) is added. It is then kneaded in gum water and designed to resemble the figure of scammony. The best of its kind is delicate in colour like *ghirā*<sup>161</sup>. What is adulterated with a milky juice of the latex plants becomes very sharp in taste and produces a white colour<sup>162</sup>.

Wax (*shamʿ*) is adulterated by many substances such as a coarse olive oil. Sometimes broad-bean (*bāqillā*)<sup>163</sup> flour and ground chick-pea (*ḥummuṣ*) are added when the wax melts. The adulteration can be known by putting the substance in water, if it floats on the surface of the water, then it is pure. If the substance sinks in the water, then it is adulterated. What is adulterated with the coarse olive oil can be purified with *ushnān*<sup>164</sup> and water<sup>165</sup>.

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<sup>159</sup>Perhaps the correct reading should be *maḥmūdah*, not *maḥūmadah*, as been used later on. *Maḥmūdah*; scammony is also known as *saqamūniyā* designates a convolvulus that grows in oriental east of Mediterranean etc. The root is sold as a drastic purgative. The name *maḥmūdah* ("the commendable") is still in use in Egypt and it is probably related to the salutary effect of the drug. Maimonides, *Glossary*. pp. 187-8.

<sup>160</sup>*Yuttūʿ*; latex plants which is of numerous kinds, all of which have in common the property of producing a milky juice (*labaniyyah*). The milky juice is viscous and very sour and burns the body on contact. Maimonides, *Glossary*. pp. 124-5.

<sup>161</sup>I have not been able to trace this term.

<sup>162</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 127.

<sup>163</sup>Martin Levey, *Al-Kindī*. p. 240.

<sup>164</sup>*Ushnān*; plant ash or alkali plant. A mixture of sodium and potassium carbonates used for washing. Martin Levey, *Al-Kindī*. pp. 231-2.

Some of the druggists have adulterated the wax by covering the inside with a black wax known as verdigris (*zanjārī*) or wax dirt (*wasakh*), and covering the top with a clear white wax, so that the purchaser will think that it is the characteristic of the whole wax. They also have adulterated the wax by covering it with a cotton when it is cheap and selling it as a true wax. Finally, al-Shayzarī and Ibn al-Ukhuwwah point out that all of these are adulterations and fraudulent practises; and the *muḥtasib* must inspect them without neglecting (*ihmāl*) any of them<sup>166</sup>.

### 6.3. The duty to supervise the physicians (*aṭibbā'*)

According to Ibn al-Ukhuwwah, the physicians should know the structure (*tarkīb*) of the body, the temperament (*mazāj*) of the organs, the diseases which occur in them; their causes (*asbāb*), manifestations (*ʿrāḍ*) and symptoms (*ʿalāmāt*), the remedies which benefit them, the methods of procuring substitutes (*ʿitiyād*) for those remedies which are unobtainable and the means of extracting (*istikhrāj*) them and the ways of treating diseases, so as to procure a balance (*tasāwī*) between sickness and remedy in their chemical compositions (*kimmiyāt*) and the way to oppose the sickness with the properties of the remedy. The physicians who do not possess these qualities are unfit to have treatment of the sick entrusted to

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<sup>165</sup>Ibn al-Ukhuwwah, *Maʿālim*. p. 127.

<sup>166</sup>Ibid.

them and it is not permissible for them to undertake any treatment involving a risk. They also should not intervene in matters in which their knowledge is incompetence<sup>167</sup>.

Ibn al-Ukhuwwah then quotes a tradition narrated by ʿAmr ibn Shuʿayb from his father and from his grandfather saying that the Prophet said; "A person who engages in medical practice without having adequate knowledge of the medicine is liable (*qāmin*) for his injuries"<sup>168</sup>.

Physicians must have a chief (*muqaddam*) of their own craft. It is said that the Greek kings (*mulūk al-Yūnān*) placed in every city a chief physician (*hakīm*) who is renowned for his wisdom and before him were presented the other physicians in the city for him to examine. Anyone whose science he found defective he ordered him to devote himself to study and he forbade him from undertaking any medical treatment<sup>169</sup>.

When the physician comes to visit a patient, he must inquire from him the cause of his sickness (*marad*) and the pain (*alam*) which he experiences. He must then prescribe (*rataba*) a regimen (*qānūn*) for him of syrups and other compounds of drugs and should write a copy of it for the

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<sup>167</sup> Ibn al-Ukhuwwah, *Maʿālim*. p. 166.

<sup>168</sup> Ibid.

<sup>169</sup> Ibn al-Ukhuwwah, *Maʿālim*. pp. 166-7.

near relatives with the witness of those who are present with the patient. On the next day he should inquire into the progress of the disease, inspect the urine-flask (*qārūrah*) and ask the patient if the sickness has diminished or not. He should then prescribe in accordance with the requirements of the case and write a copy which he should give to the relatives. Similarly, he must treat the patient on the third day and the fourth until either the patient is healed or dies. If the patient recovers (*bari'a*) the physician should receive his fee (*ujrah*) and honorarium (*karāmah*). If the patient dies, the nearest relatives should present themselves before the noted chief physician and lay before him the copies of the prescriptions which the physician wrote. If, in his opinion, they meet the requirements of science and the art of medicine without negligence (*tafrīt*) or fault (*taqṣīr*) on the physician's part, he should say, "This man's life was ended by the term of his allotted span (*ajal*).\" But if he is of the opposite opinion, he should say, "Exact the blood-money for your kinsman from the physician, for it is he who slay him by his poor skill and negligence"<sup>170</sup>. In this way the *muḥtasib* should took precaution so that no one could engage in the practice of medicine who was unfit for it and no physician could be neglectful (*tahāwun*)<sup>171</sup>.

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<sup>170</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 167.

<sup>171</sup>Ibid.

The *muḥtasib* must compel the physicians to take the oath of Hippocrates (*Abqirāṭ*), causing them to swear that they will not administer a harmful medicament to anyone or compound (*rakaba*) a poison for anyone, or describe (*waṣafa*) poisons to any member of the public. They also will pledge not to mention to any woman a medicament for procuring abortion of the embryo or to any man which will prevent procreation (*nasl*). They should cast down their glances from the women's quarters (*maḥārim*) when they come in to visit the sick and they should not disclose (*fashā*) any secret. The physicians should not tear apart (*hataka*) the patient's clothes (*astār*) or venture upon anything which has been forbidden to them<sup>172</sup>.

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<sup>172</sup>Ibid.



## CHAPTER SEVEN

### The duty to administer the municipal control of the city

#### 7.0. Introduction

As we have mentioned earlier in Chapter One, the fourth aspect of supervision discussed by the work of Yaḥyā ibn ʿUmar is a matter concerning the basic administration of the town. The cases involved are creating a door of a house situated in a narrow lane, ensuring cleanliness of the market, supervising *ahl al-dhimmah* and responsibility of a person who digs a pit<sup>1</sup>. We find this matter had been developed even further by later works of *ḥisbah* and the discussions include the duty of the *muḥtasib* to maintain the public utilities, settle disputes between neighbours and preserve law and order.

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<sup>1</sup>See pp. 73-4, 75-6.

### 7.1. The duty to maintain the public utilities

According to al-Māwardī, the discussion on this matter can be found in cases of repairing the water supply (*sharb*)<sup>2</sup>, the city walls (*sūr*), the mosques (*masājid wa jawāmiʿ*) and public buildings, as well as in the case of providing sustenance for needy wayfarers (*banū al-sabīl*). It is the duty of the *muhtasib* to look into these matters and where funds are needed he should draw the matter to the attention of the treasury. Failing this, he is entitled to raise the money from persons of substance (*dhawū al-muknah*) within the community, but not to place the responsibility on any one of them. In this case, the *muhtasib* is not required to obtain the permission of the ruler<sup>3</sup>. However, al-Māwardī raises an interesting point about the need to obtain permission from the ruler to demolish part of a building which is going to be rebuilt. Here, the ruler's permission seems to be necessary in order to secure the completion of the work. However, if the building belongs to a small community or tribe, al-Māwardī maintains that such permission is immaterial<sup>4</sup>.

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<sup>2</sup>Ibn al-Ukhuwwah's version is *sarb*, while al-Māwardī and Ibn al-Farrā' refer to it as *sharb*. See al-Māwardī, *Aḥkām*. p. 245. Ibn al-Farrā', *Aḥkām*. p. 273. Ibn al-Ukhuwwah, *Ma'ālim*. p. 26.

<sup>3</sup>Al-Māwardī, *Aḥkām*. pp. 245-6. Ibn al-Farrā'. loc.cit. Ibn al-Ukhuwwah, *Ma'ālim*. p. 26.

<sup>4</sup>Al-Māwardī. loc.cit. Ibn al-Farrā'. loc.cit. However, Ibn al-Ukhuwwah does not mention this.

## 7.2. The duty to settle disputes between neighbours

Al-Māwardī holds that this duty includes cases that involve encroachment on someone's boundary, or the privacy of one's house and erecting beams (*ajdhāʿ*) beyond one's outside walls. In these matters, the *muḥtasib* can denounce them when a complaint is made to him by the neighbour. Here, the *muḥtasib* may order the offender to remove the things complained of and in certain circumstances punish him. However, if there is a dispute, the case should be decided by the legal authorities. In a case where the neighbour allowed such encroachment, but then changes his mind before the construction has begun and complains to the *muḥtasib*, his complaint will be accepted and the disputed construction will not be built. However, if the work has already begun with the consent of the neighbour who then disagrees, the *muḥtasib* cannot compel the second person to cease his work. In a case when branches of a tree extend to the house of a neighbour, the neighbour can make a complaint to the *muḥtasib*, so that the owner will be compelled to cut them down, but he must not be punished because it is not his fault. If it is the roots of the tree which are entering the neighbour's ground, the owner cannot be compelled to remove them and the neighbour cannot be prevented from digging them up. Likewise in the case of smoke coming from an oven which irritates the neighbour, it shall not be prohibited. The same goes for inconveniences caused by mills, or

blacksmith's and fullers' shops, because these are legitimate occupations and that the owners are allowed to do what they wish with their property<sup>5</sup>.

### 7.3. The duty to preserve law and order

According to al-Māwardī, in order to maintain law and order the *muhtasib* may be involved in cases of maintenance for relatives and children, attempt to postpone settling debts without excuse<sup>6</sup>, acceptance of legacies (*waṣāyā*) and deposits (*wadā'i*<sup>c</sup>) of property, marriage of a *thayyib*<sup>7</sup>, the law of divorce concerning the waiting period, the law of maintenance involving the case of reluctant father, and care towards slaves, animals, foundlings and stray animals, overlooking someone's houses, *ahl al-dhimmah*, rules in the market place and street, removal of corpses and supervision of the masters of ship and the teachers<sup>8</sup>.

It should be noted that the *waṣāyā* is defined as the change of ownership of a property or a right after death by the act of endowment (*tabarru*<sup>c</sup>). It should be differentiated from that of *hibah*, for the latter is a

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<sup>5</sup>Al-Māwardī, *Aḥkām*. p. 255.

<sup>6</sup>It is wrong for someone who is rich and able to delay the payment of debt. *Wahbah*. 5:462-3.

<sup>7</sup>*Thayyib*, a woman who is not virgin. *Wahbah*. 7: 210-211.

<sup>8</sup>Al-Māwardī, *Aḥkām*. pp. 245-6. Ibn al-Farrā', *Aḥkām*. p. 273. Ibn al-Ukhuwwah, *Ma'ālīm*. pp. 26-7.

gift during lifetime. The only essential requirement (*rukn*) for making the contract of legacy (*waṣiyyah*) is the offer (*ʿjāb*) of the legator. As for the acceptance (*qubūl*) by the legatee (*mūṣā lahu*), it is regarded as a condition (*sharṭ*) to give the full effect of the legacy<sup>9</sup>. Meanwhile, the deposit (*wadiʿah*) is the commission given by the owner to another to hold his property in safe custody. It is a fiduciary relationship (*amānah*)<sup>10</sup>. It should be noted that a Muslim is recommended to make a legacy before he dies<sup>11</sup>. However, the maximum amount allowed is one-third of the estate for it is better for him to leave his family wealthy rather than them asking from other people (i.e. begging)<sup>12</sup>. The jurists agree that there is no specific time required for the acceptance of the legacy by the legatee, but it should be concluded after the death of the legator. Some of the Shāfiʿīs and the Ḥanbalīs consider that the heir (*wārith*) has a right to demand that the legatee signify either his acceptance or his refusal. The legacy becomes void if the legatee dies before the legator<sup>13</sup>. According to al-Māwardī, in the case of the acceptance of legacies and deposits of property (*qabūl waṣāyā*

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<sup>9</sup>*Wahbah*. 4:86. M.H.Kamali, *Principles of Islamic Jurisprudence*. pp. 337-8 (*rukn* and *sharṭ*). See Muslim, *Ṣaḥīḥ*. vol 2, pp. 63-69. Ibn Qudāmah, *al-Mughnī*. 6:414. Schacht *Introduction*. p. 173.

<sup>10</sup>Schacht, *Introduction*. p. 157. Ibn Qudāmah, *al-Mughnī*. 7:280.

<sup>11</sup>*Al-Qurʾān*. 2:180. See also 2:240, 4:12.

<sup>12</sup>Muslim, *Ṣaḥīḥ*. vol 2, pp. 63-9. Ibn al-Qudāmah, *al-Mughnī*. 6:414.

<sup>13</sup>*Wahbah*. 8:18. Schacht, *Introduction*. p. 174.

*wa wadā'i*<sup>14</sup>, the *muḥtasib* may not compel the wealthy (*a'yān al-nās*) or any individual in particular, but he may encourage them in general terms to do good deeds to each other and fear God<sup>15</sup>.

In the cases of neglecting paying debts, the *muḥtasib* should take the necessary action following the complaint from the plaintiff who is the owner of the property (*ṣaḥib al-ḥaqq*). However, he cannot detain (*ḥabs*) the accused because that is a legal action (*ḥukm*) which is to be decided by the court, but he can restrain him to secure his attendance at the trial (*mulāzamah*)<sup>16</sup>. However, Ibn al-Farrā' does not allow the *muḥtasib* either

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<sup>14</sup>*Qabūl* in legal terminology can be translated as the acceptance of one of the two parties involved in a contract including that of a marriage. Al-Tahānawī, *Kitāb Kashf Iṣṭilāḥāt al-Funūn*. vol. 2, p. 1204. See also Aḥmad Riḍā, *Mu'jām Matn al-Lughah*. vol. 4. p. 486. Lane, supplement. p. 2984. It is a recommendable act (*mustaḥabb*) for someone to accept a deposit of property, because he is fulfilling his friend's wish. However, he must return the property when demanded by its owner as this has been ordered by the Qur'ān, "Indeed, God commands you to render back your trust (*amānah*) (given to you) to those to whom it is due". *Al-Qur'ān*. 4:58. Ibn Qudāmah, *al-Mughnī*. op.cit.

<sup>15</sup>Perhaps al-Māwardī is referring to the Quranic injunction asking the Muslims to help each other in righteousness and piety (*ta'āwanū 'alā al-birr wa al-taqwā*).. ". *Al-Qur'ān*. 5:2. However, Amedroz gives a different translation. He said, "Bequests and deposits of property, he must not deal with as against persons of eminence and importance, but he may as against ordinary people, as an incentive to mutual kindness and confidence. Amedroz, *JRAS*. p. 85. Al-Māwardī, *Aḥkām*. p. 247. Ibn al-Farrā', *Aḥkām*. p. 274-5. Ibn al-Ukhuwwah, *Ma'ālim*. p. 26.

<sup>16</sup>The term *mulāzamah* is defined as to secure the defendant's attendance at the court, is suggested by Amedroz. Amedroz, *JRAS*. p. 85. See also Amedroz on *mazālim* pp. 142-5. *JRAS*. 1911, pp. 642-3. A similar description was given by the jurists. According to Abū Ḥanīfah, the creditor (*dā'in*) has a right to restrain the debtor (*madīn*) so that the former may follow the latter wherever he goes, but he cannot prevent him from taking a job or travelling. He must also not be restrained in one place, because this is considered as a detention (*ḥabs*). *Wahbah*. 5:462. Al-Māwardī, *Aḥkām*. p. 246.



to detain (*ḥabs*) or restrain (*mulāzamah*) the defendant<sup>17</sup>. As for maintenance of relatives, the *muḥtasib* must not interfere with the duty, for the case is to be decided by a legal opinion, but he may compel it when the court has given the order<sup>18</sup>.

In the case of the marriage of a *thayyib*, the *muḥtasib* has a right to compel the legal guardians (*awliyā'*) to sanction it, on the request of the *thayyib*<sup>19</sup>, on condition that the spouse to be is from the same class (*kufu'*). In the case of divorce, the *muḥtasib* has to ensure that the divorcee observes the law of waiting period (*'iddah*). Consequently, he may impose a punishment (*ta'dīb*)<sup>20</sup> on those who disregard them. However, the *muḥtasib* may not punish the reluctant guardians<sup>21</sup>.

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<sup>17</sup>This is the opinion of the Ḥanbalīs as was reported by Ibn al-Qayyim where 'Alī refused to detain or restrain the person accused, even though he was asked to do so by the plaintiff. 'Alī viewed such actions as unjust, because the accused has denied the charge. It is not sufficient to detain or restrain the accused on account of the plaintiff claiming that the defendant has borrowed some money from him and that he is rich and a squanderer. Ibn Qayyim. *al-Ṭuruq*. p. 71.

<sup>18</sup>Al-Māwardī, *Aḥkām*. p. 246. Ibn al-Farrā', *Aḥkām*. p. 275. Ibn al-Ukhuwwah, *Ma'ālim*. p. 26.

<sup>19</sup>This small injunction seems to be very significant because it has restricted the *muḥtasib*'s action, only on the request of the *thayyib*. Al-Māwardī. *Aḥkām*. p. 247. Ibn al-Farrā'. *Aḥkām*. p. 275. Ibn al-Ukhuwwah. *Ma'ālim*. p. 26.

<sup>20</sup>Presumably, the kind of punishment to be imposed is admonition (*wa'z*) since abstention from sexual activity (*ḥajr*) cannot be applied here, as in the case of a disobedient wife (*nushūz*). This, as demanded by the Qur'ān, "As to those women from whom you fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds (*ḥajr*) ..." *Al-Qur'ān*. 4:34. However, since this is a discretionary punishment, the case is to be decided by the courts. See 'Abd al-Qādir 'Audah. *Tashrī'*. 1:702-4.

<sup>21</sup>Al-Māwardī. op.cit. Ibn al-Farrā'. op.cit. Ibn al-Ukhuwwah. op.cit.

In the case of someone denying his paternity to a child which has been proven to belong to a marriage bed (*thabata firāsh ummihi*)<sup>22</sup>, he is considered as a lawful father and is responsible for providing the maintenance. Thus, if he refuses the *muhtasib* should punish him by banishment (*nafy*)<sup>23</sup>.

Similarly, the *muhtasib* must compel the master to observe the right of his slaves<sup>24</sup>, that they are not overburdened with their work<sup>25</sup>. According to Ibn al-Ukhuwwah, the servants should also be allowed to take a break in the middle of the day (*waqt al-qaylūlah*) to prevent any sickness. However, al-Māwardī and Ibn al-Farrā' do not mention this<sup>26</sup>. The *muhtasib* must denounce the master who overburdens them with work beyond their strength. He may go even further to forbid the master, when complaints are made by the slaves. The same is the case with owners of animals. However here the complaint is not necessary. If the owners argue that the animal is able to carry out its work, the *muhtasib* may make an

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<sup>22</sup>See the discussion in *Wahbah*. 7: 567-571. See also Schacht, *Origin*. pp. 181-2.

<sup>23</sup>Al-Māwardī. op.cit. Ibn al-Farrā'. op.cit. Ibn al-Ukhuwwah. op.cit.

<sup>24</sup>Ibn al-Ukhuwwah adds that the master is responsible to provide the maintenance of his slaves, such as food and clothing. He then refers to the tradition of the Prophet which said, "It is the right of the slave (*mamlūk*) to have food and clothing (to be provided by his master) according to the customary practises". See Muslim, *Ṣaḥīḥ*. vol 2, p. 87. Ibn al-Ukhuwwah, *Ma'ālim*. p. 27.

<sup>25</sup>See Muslim, *Ṣaḥīḥ*. loc.cit.

<sup>26</sup>Ibn al-Ukhuwwah, *Ma'ālim*. p. 27.

investigation and deduce on the basis of his personal reasoning because the matter involves custom and not the revealed law. Where the masters withhold (*imtināʿ*) the rights of slaves including food and clothing, the *muḥtasib* can compel their provision when complaint is made. However, the *muḥtasib* is not capable of enforcing their rights when the slaves's complaint is of insufficiency, because that matter requires a legal decision<sup>27</sup>.

Al-Māwardī maintains that animals should be adequately fed by their owners and not overworked. However, Ibn al-Ukhuwwah goes even further and he suggests that the *muḥtasib* should compel the owner to provide proper care for his animal. In the case where the owner is not capable of doing so, the *muḥtasib* may ask him to hire it out, or else to sell it. As a last resort, the *muḥtasib* may appeal to the treasury or the public generosity. According to Ibn al-Ukhuwwah, the case is similar to that of a husband who is not capable of providing necessary maintenance for his wife. Here, the husband may be compelled to sell his property so that he could feed his wife. The animals must not be overburdened and their milk may not be taken except for what is in excess of that required by their young<sup>28</sup>. This is because according to Ibn al-Ukhuwwah the purpose of milk is to provide sustenance for the young. The *muḥtasib* is also responsible to

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<sup>27</sup>Al-Māwardī, *Aḥkām*. p. 237. Ibn al-Farrāʾ, *Aḥkām*. p. 275.

<sup>28</sup>Ibn al-Ukhuwwah. loc.cit. Al-Māwardī. loc.cit. Ibn al-Farrāʾ. loc.cit.

supervise those who fail to provide adequate maintenance for a foundling (*laqīṭ*)<sup>29</sup>, and if they are not capable, he must compel them to transfer the child to someone who will accept the responsibility. The same is the case of stray animals (*ḍawāll*)<sup>30</sup>, and the finder (*wājīd*) must feed it accordingly, or else he should be compelled to hand it over to someone who is able<sup>31</sup>.

Al-Māwardī holds that the *muḥtasib* is also entitled to look into matters involving insufficiency of the payment of wages and the excessive work imposed on workers (*ajīr*) by their employer (*mustaʿjir*). Here, he can compel the payment and correct the situation by examining the case when he receives a complaint from the workers. However, if it involves legal matters, the case is to be decided by the *ḥākim*<sup>32</sup>.

The *muḥtasib* must forbid anyone to overlook other people's houses. Al-Saqāṭī mentions a story of a *muḥtasib* at Kūfah who did not allow a *muʾadhdhin* to make a call to prayer unless his eyes were blindfolded because of the people's houses and their women. He also mentions similar

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<sup>29</sup>See *laqīṭ*, an abandoned child of unknown parents who is found by somebody. *Wahbah*. 5:764. Amedroz, *JRAS*. p. 86.

<sup>30</sup>See *Wahbah*. 5:773. However, Ibn al-Ukhuwwah does not mention the cases of foundling and stray animals. Ibn al-Ukhuwwah. op.cit. Al-Māwardī. op.cit. Ibn al-Farrāʾ. op.cit. Amedroz. loc.cit.

<sup>31</sup>Al-Māwardī. loc.cit. Ibn al-Ukhuwwah. loc.cit. However, Ibn al-Farrāʾ omits this statement. Ibn al-Farrāʾ. loc.cit.

<sup>32</sup>Al-Māwardī, *Aḥkām*. p. 255.

cases in Marrakesh when a *mu'adhdhin* cheated the owner of a house which he had overlooked because he was envious of his worldly wealth and the story of a *mu'adhdhin* in Granada who was tempted by a beautiful maid he saw from his minaret so that he performed the *adhān* wrongly<sup>33</sup>. However, it is not compulsory for someone who has a tall building to cover his roof terrace (*saṭḥ*), though he is not allowed to overlook other people's houses<sup>34</sup>. In relation to this Ibn al-Farrā' holds that those who have a tall building are not required to cover their roof terrace<sup>35</sup>. *Ahl al-dhimmah* must not raise their buildings higher than those of the Muslims, and if they own a tall building, they are allowed to retain their ownership but they must not overlook their Muslim neighbours. They must also observe the terms of agreement, to maintain the differences (*ghiyār*)<sup>36</sup> in their attires and appearances (*hai'ah*) from the Muslims, and not to speak openly on matters concerning Ezra (*al-°Uzair*) and the Messiah (*al-Masīḥ*). The *muḥtasib* must forbid any Muslims from offending or insulting them, and punish those who do so<sup>37</sup>.

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<sup>33</sup>Al-Saqatī, *al-Ḥisbah*. pp. 7-8.

<sup>34</sup>Al-Māwardī, *Aḥkām*. p. 256. Ibn al-Farrā', *Aḥkām*. p. 287-8. Amedroz gives a different translation. He said, "Among the duties which partake of revealed and of worldly ordinance is that of not overtopping another building. A man who heightens his house is not bound to block the view from his roof, but he is bound not to command a view over another house." Amedroz, *JRAS*. pp. 97-8.

<sup>35</sup>Ibn al-Farrā', *Aḥkām*. pp. 287-8.

<sup>36</sup>Amedroz translates this as wearing badges. Amedroz, *JRAS*. p. 98.

<sup>37</sup>Al-Māwardī, *Aḥkām*. p. 256. Ibn al-Farrā', *Aḥkām*. p. 287-8. See Ibn al-Ukhuwwah, *Ma'ālim*. p. 40. See also p. 125 above.

In the event where the *qāḍī* denies litigants a hearing, so that it remains unsettled and both parties suffer inconveniences, the *muḥtasib* should demand that he discharge his duty, when there is no legitimate excuse<sup>38</sup>. Here, al-Māwardī argues that although the *qāḍī* is of higher rank than the *muḥtasib*, the latter is allowed to denounce the former's negligence<sup>39</sup>. He then mentions the story of Ibrāhīm b. Baṭṭā', the *muḥtasib* of Baghdād who saw litigants in front of the house of the chief *qāḍī* 'Umar b. Ḥammād waiting for his legal sitting to hear their cases. The *muḥtasib* then summoned the doorkeeper asking him to inform the chief *qāḍī* that the litigants were gathering at his door and suffering inconvenience for it was almost midday, that he should decide on whether to adjudicate or inform them of his excuse (*'udhr*) so that they might go away and come back at another time<sup>40</sup>.

A person who is entrusted with women's affairs in the market should be supervised by the *muḥtasib* for his conduct and honesty. Therefore, he must forbid those who are not reliable and dissolute. Some say that this is the jurisdiction of the police because it is related to the crime of adultery

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<sup>38</sup>According to Amedroz, "... the *muḥtasib* should, with a full apology, enforce on him his duty...". Amedroz, op.cit.

<sup>39</sup>Amedroz says, "... nor should the *qāḍī*'s dignity be a bar to disapproval of his shortcoming...". Amedroz. Ibid.

<sup>40</sup>Ibn al-Farrā' omits this story. Ibn al-Farrā', *Aḥkām*. p. 289. Al-Māwardī, *Aḥkām*. p. 257. Amedroz, *JRAS*. p. 99.



(*zinā*)<sup>41</sup>. The *muḥtasib* must ensure that the benches (*maqā'id*)<sup>42</sup> in the market do not cause any inconvenience to the passer-by. He should approve or disapprove of such things based on complaints made to him; however, Abū Ḥanīfah takes the opposite view. Similarly, the *muḥtasib* must forbid anyone from constructing a building in the street, even though it is wide. He should order the building to be pulled down, even if it is a mosque building, because the purpose of the street is for the benefit of the passer-by not for the building. It is permissible to unload goods and building materials in the streets or the markets which are to be removed gradually as long as they do not cause any harm to the passer-by. The same goes for the extension of buildings, dumping sites, watercourses and privies. Here, it is left to the *muḥtasib*'s discretion to approve or disapprove of such things because they are regarded as customary practises on which he is capable of making personal judgements<sup>43</sup>.

The *muḥtasib* is also responsible for ensuring that corpses are not removed from their graves if they had been buried in a ground owned by or permitted to the owner. If the land was unlawfully possessed the actual owner may make a request to remove the corpse to be buried elsewhere. There is a dispute on whether it is permissible to remove the corpse from

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<sup>41</sup>Al-Māwardī, *Aḥkām*. p. 258. Ibn al-Farrā', *Aḥkām*. p. 290.

<sup>42</sup>According to Amedroz it is reserved sites. Amedroz, *JRAS*. p. 100.

<sup>43</sup>Al-Māwardī, *Aḥkām*. p. 258. Ibn al-Farrā', *Aḥkām*. p. 290.

land which is affected by a flood or rain. Al-Zubayrī permits it, while others hold the opposite<sup>44</sup>.

The *muḥtasib* is also entitled to look into matter involving insufficiency of the payment of wages and the excessive work imposed on workers (*ajīr*) by their employer (*mustaʿjir*). Here, he can compel the payment and correct the situation by examining the case when he received a complaint from the workers. However, if it involves legal matters, the case is to be decided by the *ḥākim*<sup>45</sup>.

The *muḥtasib* must forbid owners of ships from carrying passengers beyond their capacity so that this endangers their lives, for there might be a ship wreck. They must also be prohibited from travelling when the wind is strong. Separation between the sexes must be exercised on board the ship by putting up a partition<sup>46</sup>.

As we have mentioned earlier, al-Māwardī and Ibn al-Farrāʾ maintain that there are three kinds of professions that the *muḥtasib* must supervise with regard to their skill, honesty and quality of work<sup>47</sup>. In this

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<sup>44</sup>Al-Māwardī. loc.cit. Ibn al-Farrāʾ. loc.cit.

<sup>45</sup>Al-Māwardī, *Aḥkām*. p. 255. See p. 134 above.

<sup>46</sup>Al-Māwardī. loc.cit. Ibn al-Farrāʾ. loc.cit. Ibn al-Ukhuwwah, *Maʿālim*. p. 222.

<sup>47</sup>See p. 205 above.

way, they hold that the *muḥtasib* is liable to supervise the teachers because they are affecting the young towards adopting an attitude which is difficult to change when they have grown up. Thus, the *muḥtasib* should only allow those who are competent and having good behaviour to practice their teaching profession<sup>48</sup>. We find the matter had been developed further by Ibn al-Ukhuwwah where the discussions not only concerned with the requirement of having honourable character and educational skill, but also detail instructions and guidelines for the teachers<sup>49</sup>.

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<sup>48</sup> Al-Māwardī, *Aḥkām*. p. 256. Ibn al-Farrā', *Aḥkām*. p. 286.

<sup>49</sup> Ibn al-Ukhuwwah, *Ma'ālim*. p. 170-2. See also R. Levy, trans. pp. 59-60.

## CONCLUSION

To conclude, it is clear from the sources that market supervision was in practice in the early period of Islam. In fact, we have found that the Prophet and his Companions had been involved in various aspects of market supervision. Thus, the Prophet not only had carried out inspection of the goods sold in the market but also had been involved in the issues of price-fixing, hoarding and the like. He also denounced various unjust and fraudulent sale transactions as well as making improvements on the rules governing the conduct of the vendors<sup>1</sup>. Similar practices are found during the time of the early caliphs<sup>2</sup>. We have also learned that a special official was appointed with the role of supervising the market. At this stage, various names had been given to the official. In the early period, he was known as *ʿāmil ʿalā al-sūq*. However, later he was called by the titles *ṣāḥib al-sūq* and *nāẓir ʿalā al-sūq*<sup>3</sup>. The fact that the roles of *ʿāmil ʿalā al-sūq*; *ṣāḥib al-sūq* and *nāẓir ʿalā al-sūq* are very similar makes it justified to believe that the latter two are a later development of the former. Presumably, the change of the title *ʿāmil ʿalā al-sūq* could be for the purpose of distinguishing him from other government officials because the

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<sup>1</sup>See previous discussion in the Introduction pp. 3-7. Chapter Four pp. 199-202.

<sup>2</sup>See previous discussion in the Introduction. loc.cit.

<sup>3</sup>See previous discussion in the Introduction pp. 7, 9-10.

term *ʿāmil* was also applied to the collector of taxes and provincial administrators<sup>4</sup>.

In relation to this, in order to discuss the role of market supervision, it seems inevitable that one should refer to the work of Yaḥyā ibn ʿUmar. The importance of this work lies not only in the fact of its being the earliest source on the subject, but also because of the information that can be obtained from it. In this way we have found that Yaḥyā ibn ʿUmar has clearly indicated that the role of market supervision was the duty of the Governor, the *qāḍī* and the market supervisor (*nāẓir ʿalā al-sūq*)<sup>5</sup>. The reason for this could be that the role of market supervision discussed in the work involves matters beyond the capability of the ordinary market supervisor. An example of this is that the work has included the duty to determine the value of weights and measures so that standard and official measures can be established<sup>6</sup>. Yaḥyā maintains that this was the responsibility of the Governor<sup>7</sup>. This is because an ordinary market supervisor seems to lack the authority to determine such cases. Thus, Yaḥyā demands that in the case of a Governor who had neglected this duty,

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<sup>4</sup>See previous discussion in the Introduction pp. 7-8.

<sup>5</sup>Yaḥyā ibn ʿUmar, *The text (second)*. p. 40. See previous discussion in the Introduction pp. 9-10.

<sup>6</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 104. *The text (second)*. pp. 38-40. See previous discussion in Chapter Two pp. 83-4.

<sup>7</sup>Yaḥyā ibn ʿUmar, *The text (first)*. loc.cit. *The text (second)*. loc.cit.

the matter would be decided by a special committee selected from trustworthy and competent members of the community<sup>8</sup>. The same applied in cases involving legal reasoning such as a dispute between the purchaser and the vendor<sup>9</sup>. It seems that an ordinary market supervisor was unfit to adjudicate the case. Thus, we have found that al-Māwardī and other authors of *ḥisbah* literature maintain that even the *muḥtasib* was also held unqualified<sup>10</sup>. Even though Yaḥyā does not clearly indicate on whom the responsibility lies, it is understandable that it is the authority of the *qāḍī*.

It should be noted at this stage that, Yaḥyā has included matters which are not related to the acts of buying and selling. In fact, these matters deal with immoral and wrongful religious behaviour as well as health and the basic administration of the city<sup>11</sup>. It is very interesting to note that the discussion on these matters was continued and was further developed when the institution of a *muḥtasib* was established. In this way it represents a strong evidence that the *muḥtasib* was a continuation of the former *ṣāḥib al-sūq* and *nāẓir ʿalā al-sūq*. In some aspects, the *muḥtasib*

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<sup>8</sup>Yaḥyā ibn ʿUmar, *The text (second)*. p. 40. See previous discussion in Chapter Two p. 84.

<sup>9</sup>Yaḥyā ibn ʿUmar, *The text (first)*. p. 137 (the sale of ashes). *The text (second)*. pp. 120-4 (the sale of fruit in jars), 124-5 (the sale of ashes). See previous discussion in Chapter Two pp. 131-3.

<sup>10</sup>Al-Māwardī, *Aḥkām*. pp. 245, 254. Ibn al-Farrāʾ, *Aḥkām*. p. 276. Al-Ghazālī, *Iḥyāʾ*. pp. 415-6. Ibn al-Ukhuwwah, *Maʿālim*. p. 197. See previous discussions in Chapter Three pp. 167-8. Chapter Four pp. 198, 209-211. Chapter Five pp. 216-7, 244-5.

<sup>11</sup>See previous discussion in Chapter One pp. 75-6. See Chapter Seven *passim*.



had adopted some elements which were taken from both the Governor and the *qāḍī*, so much so that it provided him with greater jurisdiction to appoint his assistant and decide on cases where the former *ṣāhib al-sūq* and *nāzir ʿalā al-sūq* were seen to be incapable of doing so. Regarding this matter, al-Māwardī holds that the *muḥtasib* is equal to the *qāḍī* in two situations. Firstly, the *muḥtasib* has a right to hear complaints involving the rights of men (*ḥuqūq ādamiyyīn*) in three cases:

- i) concerning deficiency in weights and measures,
- ii) cheating or fraud on an item sold (*mabīʿ*) or its value (*thaman*),
- iii) and withholding a debt due by one who is able to pay.

Al-Māwardī argues that the *muḥtasib* is given the same right as the *qāḍī* because these three cases are clear as to what is right and what is wrong. Secondly, the *muḥtasib* may compel the defendant (*muddaʿī ʿalaihi*) to discharge his liability towards the person entitled once it has been admitted<sup>12</sup>. In this way we have found that the role of market supervision had then been designated to a *muḥtasib* who now became identified with the market supervisor.

However, it is unclear when the institutions of *ṣāhib al-sūq* and *nāzir ʿalā al-sūq* were transformed into a *muḥtasib*. The view of some historians that *muḥtasib* was appointed since the ʿUmayyads period and

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<sup>12</sup>Al-Māwardī, *Aḥkām*. p. 241. Ibn al-Farrāʾ, *Aḥkām*. pp. 269-270. Ibn al-Ukhuwwah, *Maʿālim*. pp. 9-10.

continued under the early ʿAbbāsids seems to be improper and it is rather unsafe to maintain that the transformation had already been completed then, mainly because there seems to be no clear evidence regarding his duties and the fact that the official was also performing the functions of the tax official and the *qāḍī*<sup>13</sup>. In this way we have found that the work of Yaḥyā ibn ʿUmar has provided some significant information on the matter. He maintains that the duties were not only concerned with the role of supervising the market but were also involved with matters relating to observing immoral and unlawful religious behaviour as well as maintaining health and regulating basic administration of the city<sup>14</sup>. Yaḥyā ibn ʿUmar does not mention that the official was called *muḥtasib*. Instead, he demands that the duties should be carried out by the Governor, the *qāḍī* and the market supervisor<sup>15</sup>. Thus, the work seems to suggest that the institution of *ḥisbah* was only at a preliminary stage. However, later, as was indicated by the work of al-Nāṣir li al-Ḥaqq, these duties were carried out the *muḥtasib*. In this way, the transformation could have taken place by the time of al-Nāṣir li al-Ḥaqq. However, al-Nāṣir maintains that *ḥisbah* is a complete manifestation of the acts of a *qāḍī*<sup>16</sup>. Thus, at this stage it seems that *ḥisbah* was not separated from the *qaḍāʾ*. In this way it seems more

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<sup>13</sup>See previous discussion in the Introduction pp. 10-12.

<sup>14</sup>See previous discussion in Chapter One pp. 75-6.

<sup>15</sup>See above note number 5.

<sup>16</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11. See previous discussion in the Introduction p. 12.

likely that by the time of al-Māwardī the institution of a *muḥtasib* had become independant from the *qaḍā'*<sup>17</sup>. As a result we have found that further development had been made with regard to the function of the *muḥtasib* in matters dealing with immoral and wrongful religious behaviour as well as health and the management of city together with his traditional role of supervising the market<sup>18</sup>. Presumably, the reason for these additional duties could be because of the introduction of the terms *ḥisbah*, *iḥtisāb* and *muḥtasib*. As we have discussed earlier, literally *ḥisbah* means to anticipate God's reward<sup>19</sup>. In other definitions, *ḥisbah* denotes the act of someone who denounces another person's wrongful behaviour and is also referred to the person who examines his conscience<sup>20</sup>. In this domain, it seems obvious that the term *ḥisbah* is a kind of religious act. As a result the function of the *muḥtasib* in this matter would be for the purpose of denouncing immoral and wrongful religious behaviour. We have found that this connection has been made by al-Nāṣir li al-Ḥaqq and al-Sunāmī<sup>21</sup>. The word *ḥisbah* also means *naẓar* (supervision) and *tadbīr*

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<sup>17</sup>See previous discussion in the Introduction. loc.cit.

<sup>18</sup>See previous discussions in Chapter Four (The duty to supervise the market), passim. Chapter Five (The duty to supervise immoral and religious behaviour), passim. Chapter Six (The duty to inspect health professions), passim and Chapter Seven (The duty to administer the municipal control of the city) passim.

<sup>19</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11. Al-Sunāmī, *Niṣāb al-Iḥtisāb*. pp. 2-3. See previous discussion in the Introduction p. 13.

<sup>20</sup>See previous discussion in the Introduction pp. 13, 15.

<sup>21</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11. Al-Sunāmī, *Niṣāb al-Iḥtisāb*. pp. 2-3. See previous discussion in the Introduction p. 17-18.

(administration), so that it seems justifiable to include the duties to supervise the health professions and administer the control of the city as part of the functions of the *muḥtasib*<sup>22</sup>. We have found that this connection had been made by al-Sunāmī<sup>23</sup>.

As we have discussed earlier, al-Ghazālī maintains that subject of *ḥisbah*'s supervision includes cases which are obvious to the *muḥtasib* without spying (*tajassus*) or for him to make personal legal reasoning (*ijtihād*)<sup>24</sup>. This seems to limit the authority of the *muḥtasib*. However, we find the *muḥtasib* had been involved in almost all aspects of daily life. In fact, al-Ghazālī's opinion on this matter is based on the authority of the *Qur'ān* which forbade spying<sup>25</sup>. However, he then explains that the restriction is only applied to hidden sins and those wrongful acts committed behind locked doors. On the contrary, al-Ghazālī argues that the *muḥtasib* is liable to investigate these wrongful acts when he had received information concerning such activities, or when circumstantial evidence; such as smell, voice and shape, make these cases obvious to the *muḥtasib*<sup>26</sup>. We have found that according to al-Māwardī, Ibn al-Farrā'

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<sup>22</sup>See previous discussion in the Introduction pp. 15-16.

<sup>23</sup>Al-Sunāmī, *Niṣāb al-Iḥtisāb*. op.cit. See previous discussion in the Introduction. op.cit.

<sup>24</sup>Al-Ghazālī, *Iḥyā'*. p. 414. See Chapter Three pp. 164-7.

<sup>25</sup>*Al-Qur'ān*. 49:12.

<sup>26</sup>See previous discussion on Chapter Three. pp. 166-7, 169.

and Ibn al-Ukhuwwah, the *muḥtasib* may be incapable of making personal legal opinion, but he is competent to decide cases involving customary law<sup>27</sup>. As a result we have found that al-Māwardī and Ibn al-Farrā' hold that the functions of the *muḥtasib* include the supervision of medical practitioners and teachers, and the administration of the municipal control of the city<sup>28</sup>. We have found that these matters had been developed by the works of later scholars such as al-Shayzarī and Ibn al-Ukhuwwah, which in fact contain detailed descriptions involving adulteration of various drugs and the method of testing them<sup>29</sup>.

It should be noted that from the legal perspective, the nature of *ḥisbah* literature seems to create a new approach in writing. In this way, the work of Yaḥyā ibn ʿUmar was, in fact, a compilation of legal opinions<sup>30</sup>. The fact that these legal opinions are made based on a clear understanding of the applications of Islamic law which derived from the *fiqh* (law) books, is not a reason for it to be considered as an exclusive work of *fiqh*. In fact, the writing of these legal opinions should be differentiated from ordinary works of *fiqh*. An obvious reason for this is that the *fiqh*

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<sup>27</sup>See previous discussion in Chapter Three p. 148 and Chapter Seven p. 294. Al-Māwardī, *Aḥkām*. pp. 243-4 and 258. Ibn al-Farrā', *Aḥkām*. pp. 271-2 and 290. Ibn al-Ukhuwwah, *Maʿālim*. pp. 8-9.

<sup>28</sup>See Chapter Four p. 205.

<sup>29</sup>See Chapter Six passim.

<sup>30</sup>See previous discussion in the Introduction p. 22.

literature on many occasions deals with speculated events and theoretical cases. In contrast, the work of Yaḥyā and other *ḥisbah* literature are discussing current phenomena. Another aspect of *ḥisbah* writing which differentiates it from the *fiqh* books is that the discussion is not concentrating on the disputes between the different schools of law or focusing on certain legal controversies between the jurists. In fact, the writing of *ḥisbah* literature is concerned with providing a practical solution to contemporary problems of the *muḥtasibs* so that the literature becomes a guide book for them in carrying out their functions. It should be noted that most of the authors of *ḥisbah* literature indicate that this was the purpose of their writing<sup>31</sup>. In this understanding, these works of *ḥisbah* seem to provide a firm ground for the codification of Islamic law.

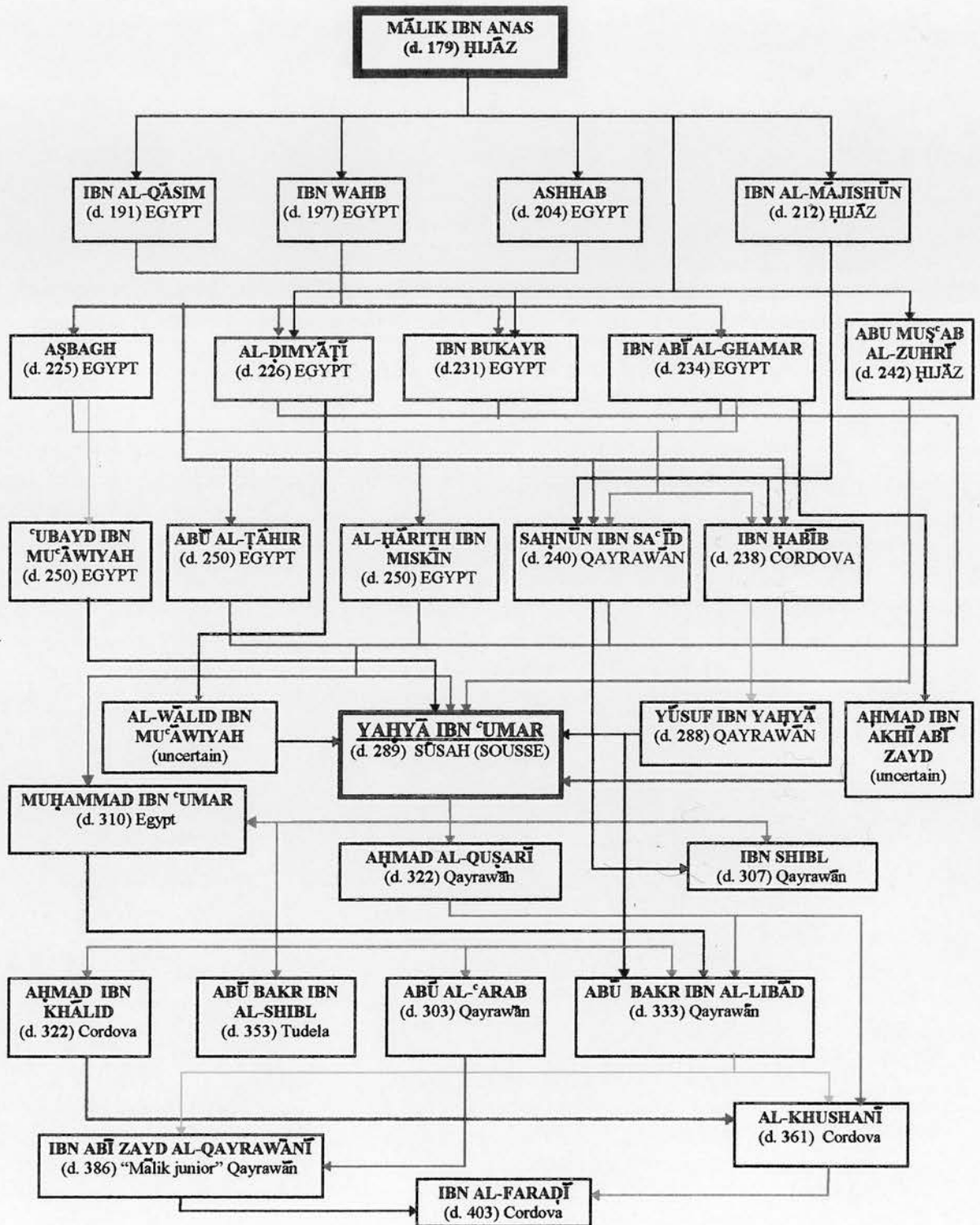
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<sup>31</sup>Al-Nāṣir li al-Ḥaqq, *Kitāb al-Iḥtisāb*. p. 11. Al-Māwardī, *Aḥkām*. p. 259. Al-Saqāṭī, *al-Ḥisbah*. p. 3. Al-Shayzarī, *Nihāyah*. p. 3. Ibn al-Ukhuwwah, *Maʿālim*. p. 3. Al-Sunāmī, *Niṣāb al-Iḥtisāb*. p. 1.



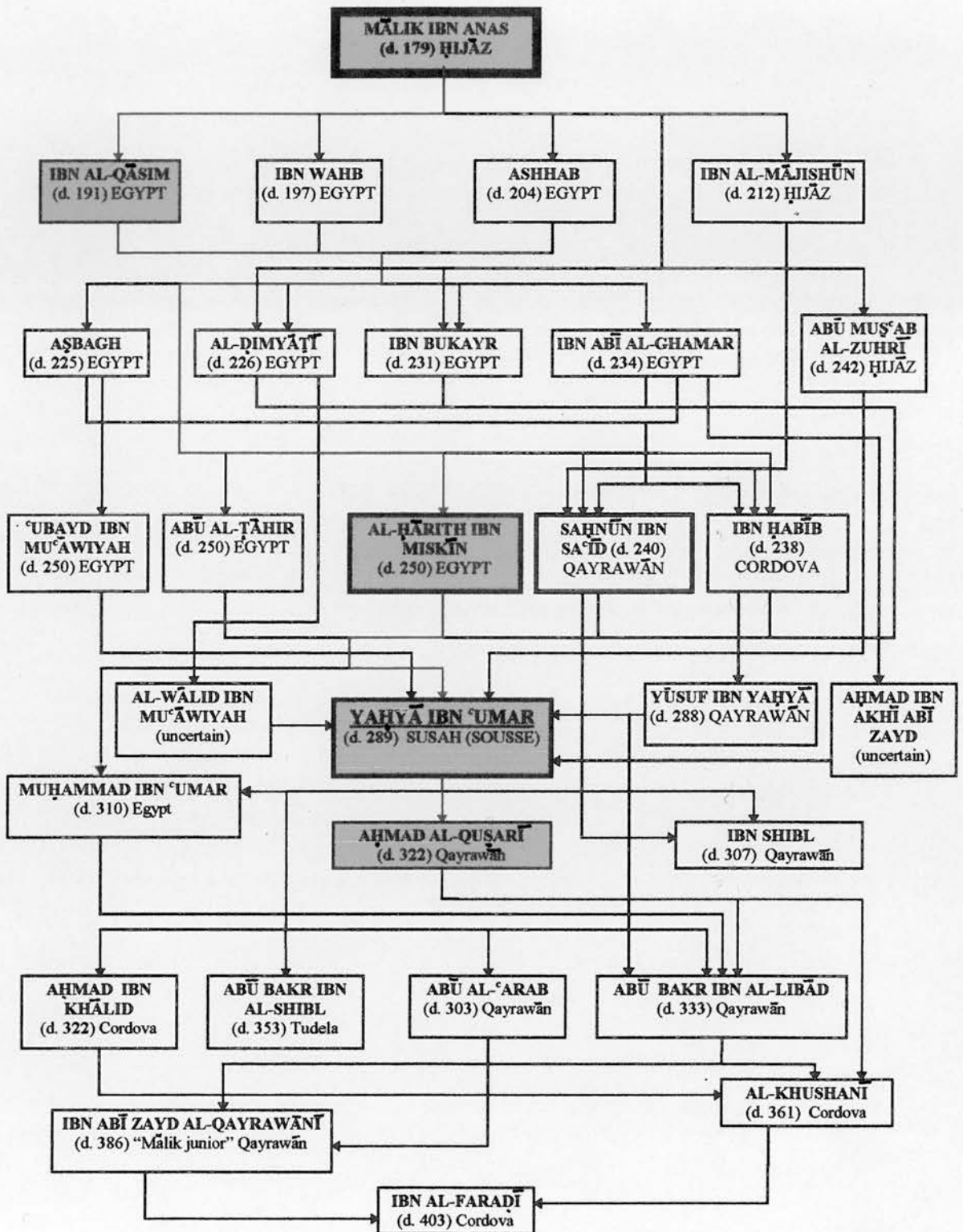
## APPENDIX A

FIGURE 1.1: THE RELATIONSHIP BETWEEN THE MĀLIKĪ SCHOLARS AND THEIR TEACHERS

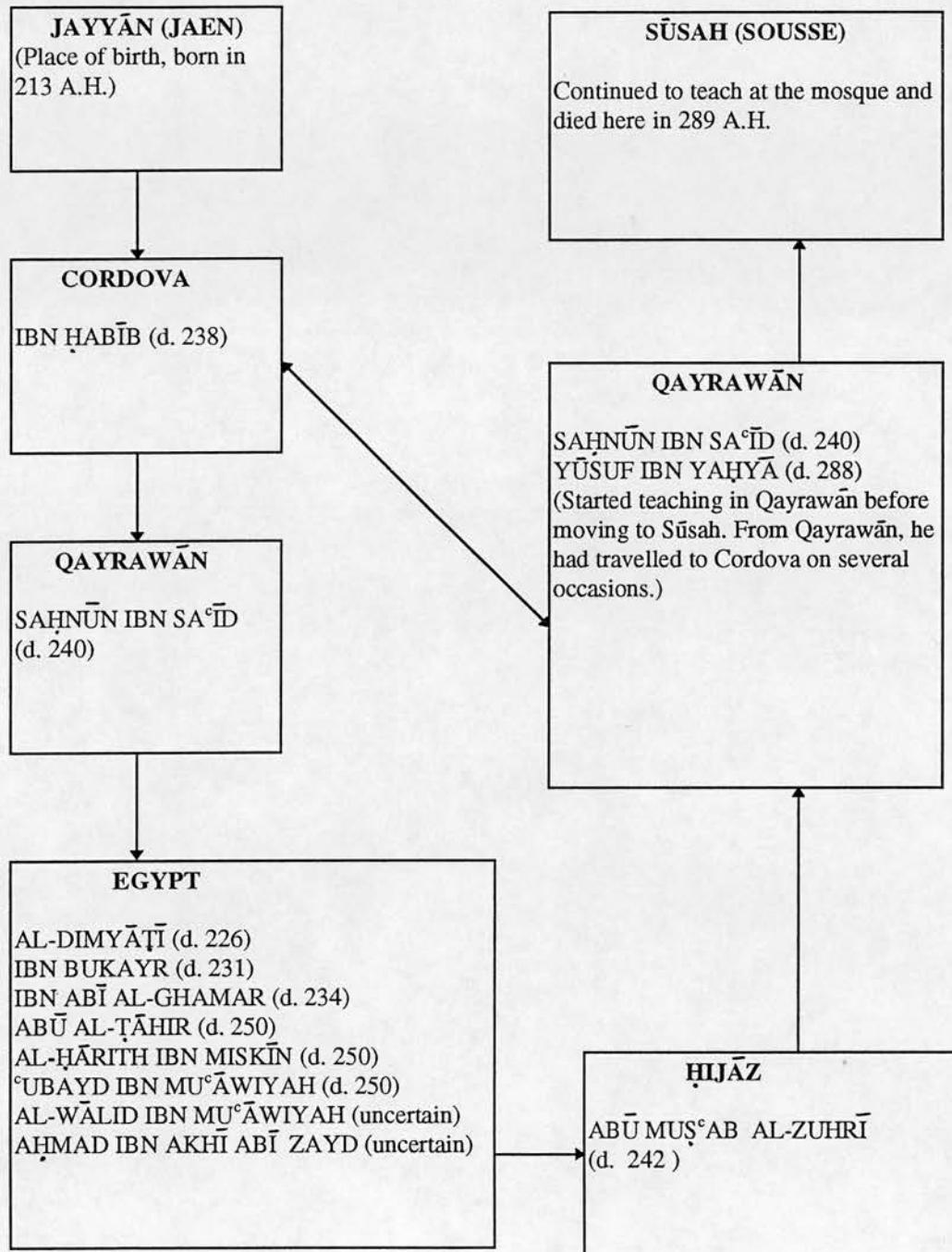


## APPENDIX B

FIGURE 1.2: THE MOST FREQUENT TYPE OF ISNĀD OF THE TEXT OF THE SECOND VERSION

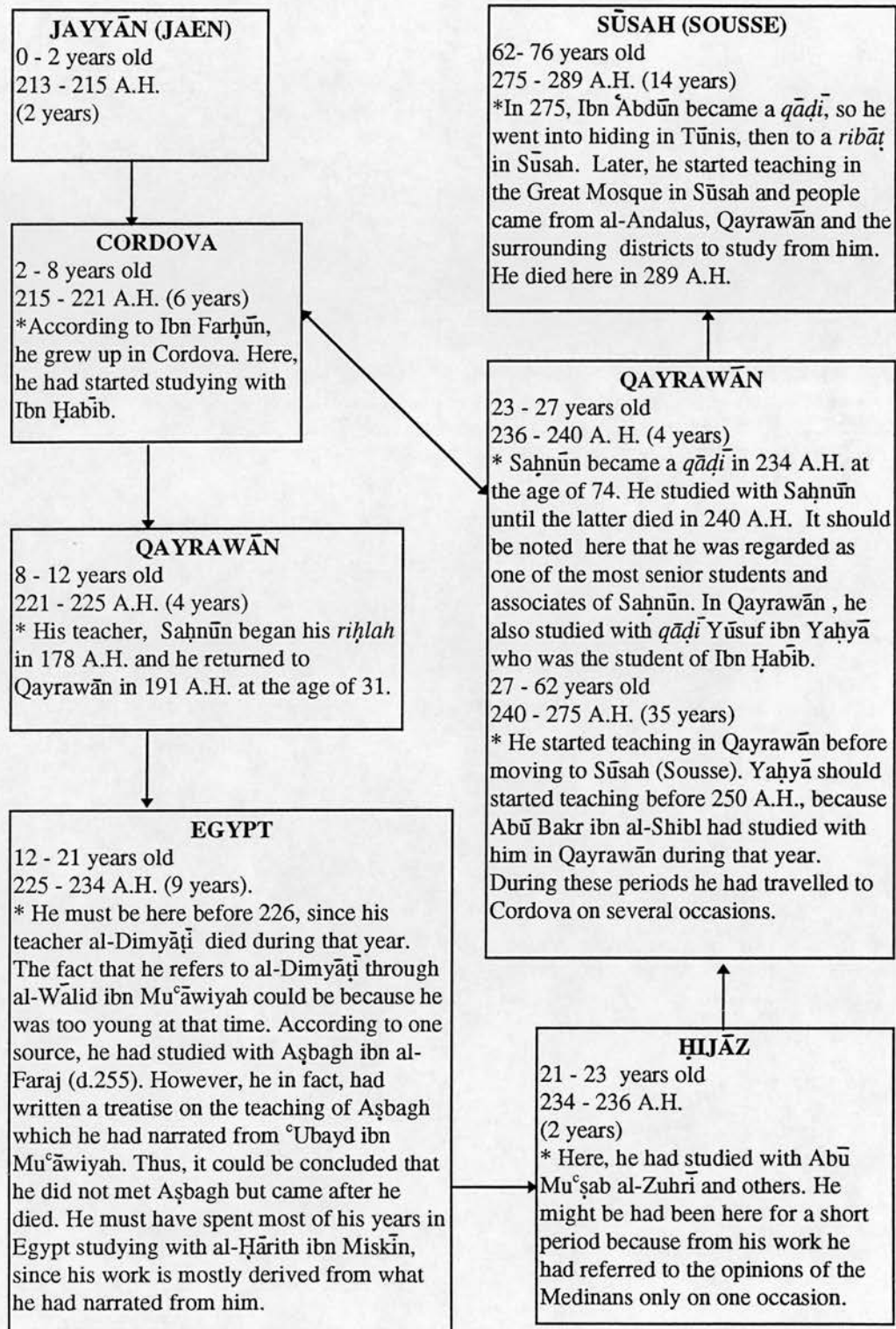


## APPENDIX C

FIGURE 1.3: THE RIḤLAH OF YAḤYĀ IBN ʿUMAR AL- KINĀNĪ AL-ANDALUSĪ

## APPENDIX D

FIGURE 1.4. THE PRESUMED AGE OF YAḤYĀ IBN ʿUMAR



Based on the above, it can be concluded that Yaḥyā ibn ʿUmar had spent 21 years of his life (from 6 - 27) studying, and 49 years teaching (from the age of 27 - 76).

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